INSTITUTE OF LAW RESEARCH AND REFORM
EDMONTON, ALBERTA

# PROPOSALS FOR A NEW ALBERTA INCORPORATED ASSOCIATIONS ACT

Report No. 49

March 198[illegible]

89-02055/

INSTITUTE OF LAW RESEARCH AND REFORM

EDMONTON, ALBERTA

# PROPOSALS FOR A NEW ALBERTA INCORPORATED ASSOCIATIONS ACT

REPORT NO. 49

March 1987

## INSTITUTE OF LAW RESEARCH AND REFORM

The Institute of Law Research and Reform was established January 1, 1968, by the Government of Alberta, the University of Alberta and the Law Society of Alberta for the purposes, among others, of conducting legal research and recommending reforms in the law. Funding of the Institute's operations is provided by the Government of Alberta, the University of Alberta and the Alberta Law Foundation.

The Institute's office is at 402 Law Centre, University of Alberta, Edmonton, Alberta, T6G 2H5. Its telephone number is (403) 432-5291.

The members of the Institute's Board of Directors are J.W. Beames, Q.C. (Chairman); Professor R.G. Hammond (Director); Myra B. Bielby; C.W. Dalton; W.H. Hurlburt, Q.C. ; H.J.L. Irwin; Professor J.C. Levy; Professor D.P. Jones; The Honourable Mr. Justice D. Blair Mason; Dr. J.P. Meekison; Bonnie Rawlins; A.C.L. Sims; and C.G. Watkins.

The Institute's legal staff consists of Professor R.G. Hammond, Director; Richard Bowes; Professor C. Davies; George C. Field, Q.C.; Professor Thomas W. Mapp; and Margaret A. Shone. W.H. Hurlburt, Q.C. is a consultant to the Institute.

## ACKNOWLEDGMENTS

The Institute is deeply indebted to the many people who have taken much time and trouble to comment on the Institute's evolving proposals and to make constructive and useful suggestions for the improvement of those proposals. A comparison between this report and the draft proposals which were circulated in September, 1986, will show the profound effect which the comments and suggestions have had on our final recommendations.

Mr. W.W. Proskiw, the Registrar of Corporations and his senior staff have taken great pains with the successive drafts of the Institute's proposals. Two groups of lawyers, one at Calgary and one at Edmonton, met for a day to discuss the issues. Meticulous and thoughtful letters from both lawyers and non-lawyers have made useful and constructive criticisms and suggestions. The Registrar's federal, Ontario, New Brunswick, Nova Scotia and Saskatchewan counterparts have given of their time and advice. Appendix B gives a more complete list of those who have been so helpful to us.

## Table of Contents


TABLE OF ABBREVIATED REFERENCES .....

PART I SUMMARY .....1

PART II REPORT .....5

CHAPTER 1. INTRODUCTION .....5

A. Reasons for this report .....5

B. Scope of this report .....7

C. Conduct of the Institute's Project .....7

D. A question of nomenclature .....8

E. How to read this report and the attached draft Act .....8

CHAPTER 2. THE EXISTING LAW .....10

A. The Societies Act .....10

B. The Companies Act .....11

C. The Business Corporations Act .....12

D. Problems under the existing law .....12

Recommendation 1 .....13

CHAPTER 3. GENERAL POLICY ISSUES .....14

A. One Statute .....14

Recommendation 2 .....15

Recommendation 3 .....15

B. Associations which should be allowed to incorporate under the proposed statute .....15

Recommendation 4 .....18

C. Purpose of Statute .....18

Recommendation 5 .....20

D. Efficiency .....20
Recommendation 6 .....21
E. Relationship of the proposed statute to the Business Corporations Act .....21
Recommendation 7 .....22
F. Relationship to the income taxation system .....22
Recommendation 8 .....24
G. Classification of incorporated associations .....24
Recommendation 9 .....25
CHAPTER 4. SPECIFIC POLICY ISSUES .....26
A. When property or income may be distributed to a member .....26
Recommendation 10 .....28
Recommendation 11 .....29
B. Purposes for which an association may be incorporated .....30
Recommendation 12 .....31
C. Incorporating for the purpose of carrying on business .....31
Recommendation 13 .....32
D. Statement of purposes and constitutional restrictions .....33
Recommendation 14 .....34
E. Powers of an incorporated association .....34
Recommendation 15 .....35
F. Constitution of an incorporated association .....35

Recommendation 16 .....38

G. Incorporation of a new incorporated association .....40

Recommendation 17 .....40

H. Bringing existing companies and societies under the statute .....40

Recommendation 18 .....42

I. Names of incorporated associations .....43

Recommendation 19 .....45

J. Membership and share capital .....46

Recommendation 20 .....47

K. Directors .....48

(1) Requirement of directors .....48

(2) Number of directors .....50

(3) Qualification of directors .....50

(4) Election and removal of directors .....51

(5) Duties and obligations of directors and officers .....51

Recommendation 21 .....54

Recommendation 22 .....54

L. Financial affairs .....56

Recommendation 23 .....58

Recommendation 24 .....58

Recommendation 25 .....58

M. Amalgamation .....59

Recommendation 26 .....59

N. "Continuance" from one jurisdiction to another .....60
Recommendation 27 .....60
O. Remedies .....60
(1) Investigation .....60
Recommendation 28 .....61
(2) Compliance orders and derivative actions .....62
Recommendation 29 .....64
Recommendation 30 .....65
(3) Right to dissent and be bought out .....65
Recommendation 31 .....66
P. Liquidation,dissolution, and revival .....66
Recommendation 32 .....68
Q. Extra-Provincial non-profit corporations .....68
Recommendation 33 .....70
CONCLUSION .....70
PART III LIST OF RECOMMENDATIONS .....72
PART IV DRAFT LEGISLATION .....86
APPENDIX A: ANTI-DISCRIMINATION LEGISLATION .....213
APPENDIX B: COMMENTATORS .....222

## TABLE OF ABBREVIATED REFERENCES

| | |
|---|---|
| Business Corporations Act, SA 1981 c. B-15 | Business Corporations Act or BCA |
| Companies Act, RSA 1980 c. C-20 | Companies Act or ACA |
| Societies Act, RSA 1980 c. S-18 | Societies Act or SA |
| Canada Non-Profit Corporations Bill, Bill C-10, 29 Elizabeth II, 1980, House of Commons of Canada | Federal Bill C-10 or Federal Non-profit Corporations Bill |
| Non-profit Corporations Act, SS c. N-4.1 | Saskatchewan Act or Saskatchewan Non-profit Corporations Act |
| Draft Incorporated Associations Act contained in Part III of this report | Draft Act |

## PART I SUMMARY

Most non-profit associations must now incorporate and operate under one statute which is obsolete (the Societies Act), another which is designed for business corporations and is therefore unsuitable for a non-profit association (the Business Corporations Act), or a third which is both obsolete and designed for business corporations (the Companies Act). Felt needs are not being met. Questions are not being answered. The interests of members, management and directors are not being properly balanced.

This report makes recommendations for the enactment of a new Incorporated Associations Act. We believe that such an act would cure these deficiencies without interfering with the easy day to day operation of non-profit associations.

The proposed Incorporated Associations Act would repeal both the Companies Act and the Societies Act for non-profit associations. It would apply to the 13,000 or so existing societies and non-profit companies and it would apply to the non-profit associations which will be incorporated in the future.

As the proposed Act would be intended to apply only to true non-profit associations, it would forbid an association incorporated under it to distribute any property or income to the members of the association during the association's existence. It would allow a non-profit association, for tax or other reasons, to go further and prohibit the distribution of property and income to members even upon the dissolution of the association.

The proposed Act would not replace some specialized statutes -- the Cemetery Companies Act, the Co-operative Associations Act and the Agricultural Societies Act -- and it would not apply to non-profit corporations incorporated by the Legislature under special individual Acts.

The report proposes that anyone be able to incorporate a non-profit association. Incorporation would be by right, and would be achieved by following a few simple statutory requirements. Those requirements would be: the filing of articles of incorporation in a simple statutory form, the filing of notices of directors and of registered office, and payment of the prescribed fee. As is the case now, the incorporators would have to provide a name search similar to that provided for the incorporation of a business corporation, and the name chosen would have to comply with regulations like those which apply to business corporations. The name of the association would have to end with "Incorporated Association" or "I.A." to indicate that it is an incorporated non-profit association.

The articles of incorporation would set out the association's name, its purposes and the classes of memberships. The articles would have to prohibit the distribution of the association's property and income to its members during its existence (with some limited exceptions), and could go further and prohibit distribution even when the association is dissolved.

The articles of incorporation, which would set out the fundamental things mentioned above, and the by-laws, which would govern the operation of an incorporated association, would be the incorporated association's constitution. Regulations would

provide a standard set of by-laws, but an association could adopt its own different by-laws if it wished.

Like an Alberta business corporation, an incorporated association would have all the powers of a natural person. It would, however, be required to use those powers only for the purposes stated in the articles of incorporation (though an outsider who did not know that it was acting outside its purposes would be able to rely upon what it did). Members could therefore insist that it stay within what it was originally intended to do unless the purposes are changed by a 2/3 majority, and an incorporated association with both an income and a liquidation distribution restriction would be able to change its purposes only with Court approval.

The draft Act is intended to cover a wide range of incorporated associations, for example, a major public charity, a private charitable foundation, a sport or social club, a trade association, a fraternal organization, and a neighbourhood group. It is not designed to cover subjects which should be dealt with elsewhere in the law, such as the regulation of charities and discrimination in membership. While it would impose some additional requirements on incorporated associations which have solicited public funds or received a government grant within the preceding three years, these are modest. One is a requirement of at least 3 directors while other incorporated associations could get by with one. The second requirement is that a soliciting association have an auditor who gives the kind of opinion that auditors usually give, while other associations could either dispense with an auditor by unanimous resolution or arrange for a

lesser examination of the books by a 2/3 majority. However, where small amounts of money are involved, regulations could give an exemption from a full-scale audit.

An incorporated association would have a great deal of flexibility in its internal operations. By-laws could re-arrange the powers usually exercised by directors, and they would provide for admission to membership, transfer of membership, and termination of membership (though termination would have to be done in accordance with natural justice -- that is, if the association proposed to terminate a membership except for non-payment of dues and the like, a member would be entitled to receive notice and to have a sufficient opportunity to rebut before an impartial decision-maker any charges made against him or her).

Many of the other parts of the draft Act are similar to counterpart provisions in the Business Corporations Act: liquidation and dissolution, amalgamation of incorporated associations, transfer of registration into and out of Alberta, remedies of members (though the draft Act would not confer upon a member a right to sue because the affairs of the association are being conducted in a way which is harsh or oppressive), the registration of extra-provincial non-profit corporations, and so on.

# PART II REPORT

## CHAPTER 1. INTRODUCTION

### A. Reasons for this report

In 1980, the Institute issued its Report 36, Proposals for a New Alberta Business Corporations Act, which was the foundation of the present Business Corporations Act. That was an onerous project. The inclusion of non-profit corporations would have made it unmanageable. Non-profit corporations were therefore left under the Societies Act and the Companies Act for the time being.

In Report 36, we said that we contemplated that another statute would replace the Societies Act and, insofar as it refers to non-profit corporations, the Companies Act. It was understood between the Department of Consumer and Corporate Affairs and the Institute that the Institute would make later proposals for such a statute. This report makes those proposals.

Two factors make it desirable to review the existing machinery for the incorporation and operation of non-profit corporations. The first is the importance of that machinery to a great many people. The fact that there are nearly 13,000 societies and non-profit companies on the corporate registry testifies to this. The incorporation of a corporate entity provides an organizational structure for an activity; it defines the relationships and balances the interests of majorities, minorities and managers; it helps an organization to obtain

charitable or tax-exempt status; and it protects its members against claims for things done by the corporate entity. The law has long recognized that the desire to incorporate is legitimate, whether or not the activity for which incorporation is sought is carried on for pecuniary gain.

The second factor which makes it desirable to review the existing machinery is that the machinery is obsolete. The fact that both the Societies Act and the Companies Act were first enacted in the 1920s and were based on older ideas is not itself enough reason to call for change, but it means that the two statutes do not reflect current thinking and do not answer many current questions.

Our review and the great amount of advice and encouragement which we have received have made it clear to us that a modernized non-profit corporations statute is needed for Alberta. This view is not based upon any one specific difficulty with the existing legislation. Rather, it is based upon the existence of many gaps and many provisions which are not suitable in today's conditions. Non-profit corporations can muddle along with the present legislation but it is simply not adequate for many more.

The need for modernized non-profit corporations legislation has been felt outside Alberta as well as inside. The federal Non-profit Corporations Bill of 1980 would have enacted a modern federal non-profit corporations statute. Saskatchewan enacted a statute based upon the federal bill. Manitoba has included in its Corporations Act special parts dealing with "community development corporations", "benevolent corporations", and corporations without share capital. Other provinces have been

actively considering a reformed non-profit corporations law. In recent years, important American states have also enacted new non-profit corporations statutes.

B. Scope of this report

This report deals only with the non-profit corporations which have been or would be incorporated under the Companies Act and the Societies Act. That is as much as we can cope with in one project. The report does not deal with the non-profit corporations which have been or will be incorporated under the Cemetery Companies Act, the Agricultural Societies Act, the Religious Societies' Land Act or the Co-operative Associations Act, nor does it deal with non-profit corporations which have been incorporated by special individual statutes. The existence of a new general non-profit corporations statute would, however, facilitate later reforms involving the other statutes if such reforms are thought necessary.

C. Conduct of the Institute's project

We have done much research into the subject of non-profit corporations and have examined the legislation of several Canadian and American jurisdictions. While we have not given general circulation to a report for discussion, we have given limited circulation to earlier drafts of a non-profit corporations statute and have engaged in consultation on those drafts.

Those whom we have consulted include the Registrar of Corporations, his colleagues and his counterparts in other

Canadian jurisdictions, lawyers with experience in the field, and non-lawyers with experience in the incorporation and operation of non-profit corporations. The views of those consulted have transformed our original proposals almost beyond recognition, and we gratefully acknowledge the assistance we have received.

D. A question of nomenclature

In this introduction, we have talked of "non-profit corporations". This term is suitable for discussion among lawyers, but may be forbidding and confusing to many people who are not accustomed to think of their societies and associations as "corporations".

We propose to talk of "incorporated associations". This term conveys the idea of coming together for a common purpose, and it conveys the idea of incorporation. It will distinguish non-profit corporate entities from the business corporations dealt with by the Business Corporations Act. Occasionally, when the context requires, we will talk of "non-profit associations", which may be either incorporated or unincorporated.

E. How to read this report and the attached draft Act

This Part II includes two things. The first is a discussion of the principal policy issues which must be resolved before a new statute governing non-profit corporations can be drafted. The second is our recommendations about the resolution of those issues. In order to avoid obscuring the main points, we have kept the discussion to a minimum and we have not dealt with a myriad of points of detail.

Part IV, the draft Act, does two things. The first is to put into legislative language the principal recommendations from this Part II. The second is to provide the detail.

A reader who is interested only in the general thrust of our proposals may be contented by a reading of this Part II. A reader who wants to go further into our proposals should look at the draft Act as well. We provide cross-references from the recommendations to the draft Act and vice versa so that the reader who wishes to do so can move from one to the other.

# CHAPTER 2. THE EXISTING LAW

## A. The Societies Act

In 19th century Britain, the law recognized "friendly societies", "benevolent societies", and workmen's societies. "Friendly societies" were established for the mutual relief of their members and of their members' families during infancy, old age and sickness: they acted as something like insurers. "Benevolent societies" were established for benevolent or charitable purposes. However, while the law recognized such societies, it did not provide for their incorporation.

In 1891-2, a Territorial ordinance provided for incorporation of a society for a "benevolent or provident purpose and for any other purpose not illegal". This encompassed both the friendly society and the benevolent society. An earlier Territorial ordinance of 1890 had provided for the incorporation of "mechanics literary institutes" to provide evening classes, libraries and reading rooms for their members. The Societies Act, 1924, replaced and to some extent modernized these ordinances. The present Societies Act is much the same as the 1924 Act.

The Societies Act provides for the incorporation of societies for "any benevolent, philanthropic, charitable, provident, scientific, artistic, literary, social, educational, agricultural, sporting or other useful purpose." Incorporation is subject to the discretion of the Registrar, but it is rarely, if ever refused.

The constitution of a society is found in two documents. The first is an application for incorporation, which contains the basic characteristics of the society, including its purposes. The second document is the by-laws, which provide for officers and directors and which regulate procedures. These documents are customarily comparatively short and simple. The Societies Act is also quite short, consisting of 34 sections on some 10 pages.

B. The Companies Act

Legislation providing for the incorporation and operation of companies was enacted in Territorial times. The 1929 Companies Act replaced that legislation. It was based upon the United Kingdom Companies Acts, commencing with the Act of 1862. It included the predecessor of the present Part 9 of the Companies Act, which makes special provision for non-profit companies and which was first enacted in Alberta in 1913 (see 1913 SA (2nd sess.) c. 20 s. 2-4).

Until the enactment of the Business Corporations Act, the Companies Act allowed anyone to incorporate a company for "any lawful purpose". Incorporation under the Companies Act is as of right: the Registrar of Companies must issue a certificate of incorporation to anyone who delivers the documents and fees required by the Act and conforms to the rules about company names.

The consitution of a company consists of a memorandum of association and, customarily, articles of association. Having been shaped by the needs of business companies, the memorandum and articles tend to be comparatively long and complex, the

sample articles of association provided by Table A of the Companies Act being composed of 95 articles on 13 pages. The memorandum of association deals with fundamental characteristics of a company and the articles with important procedural matters. The Companies Act is long and complex, consisting of 316 sections on 135 printed pages.

The Companies Act was designed primarily for business corporations. It does not exclude incorporation for non-profit purposes, and Part 9 specifically provides for the incorporation of non-profit companies "for the purpose of promoting art, science, religion, charity or any other useful object" and "for the purpose of promoting recreation among its members". All provisions of the Companies Act apply to a non-profit company except that the company's name need not include the word "limited". A non-profit company under the Companies Act is therefore governed by a statute primarily intended for business corporations.

C. The Business Corporations Act

The Business Corporations Act was enacted in 1981 to replace the Companies Act for business corporations. A non-profit corporation can be incorporated under it as of right. The BCA is, however, designed for business corporations, and separate legislation is needed for non-profit associations.

D. Problems under the existing law.

The problem with Alberta law is not that there is a void: anyone can form a corporate entity of one kind or another -a

"company" under the Companies Act, a "society" under the Societies Act, or a "corporation" under the Business Corporations Act -- for any purpose. The problem is rather, that the machinery provided by the Business Corporations Act, being designed to meet the needs of business corporations, is not suitable for non-profit associations; the machinery provided by the Societies Act is incomplete and obsolete; and the machinery provided by the Companies Act suffers both from being designed for business corporations and from being obsolete.

We believe that the time has come to replace the two obsolete statutes with new legislation which is carefully considered in the light of current conditions and of recent developments in corporation law. We believe that such legislation would satisfy the wants and needs of Albertans much better than do the existing statutes.

Recommendation 1

We recommend that new legislation repeal and replace the Societies Act and the Companies Act, insofar as it relates to non-profit companies.

# CHAPTER 3. GENERAL POLICY ISSUES

## A. One statute

Under the present law, the incorporators of a non-profit association choose whether the association will be incorporated under the Companies Act or under the Societies Act. Incorporators who want to use share capital -- charitable foundations and some clubs, for example -- and incorporators who want comparatively detailed and comprehehsive structures and procedures, choose the Companies Act. Incorporators who are more concerned with simplicity of operation and who feel no need for a highly structured constitution and procedures choose the Societies Act.

It would be possible to enact two or more statutes dealing with the incorporation of non-profit associations. For one example, one statute could provide for incorporated charities, a second for clubs and a third for associations formed to promote other causes.

Another possible course of action would be to continue the essence of the present situation by some modest reforms to the Societies Act and by the enactment of a more complex statute for those who want it. We think, however, that it is more convenient to have everything to do with the great bulk of non-profit corporate entities in one place. We think that confusion will be caused if incorporators are required to classify their proposed corporate entities according to rigid legal categories in order to fit into one statute or another, and that even small and informal associations sometimes need answers to questions which a

short and simple statute cannot answer. Finally, we think that operating under a relatively long statute can be made as simple for incorporated associations as operating under a shorter one. We accordingly propose that one new statute replace both the Companies Act (insofar as non-profit companies are concerned) and the Societies Act.

Recommendation 2

We recommend that the new legislation be contained in one statute.

Part IV of this report is a draft Incorporated Associations Act which, if adopted, would give effect to the recommendations which we make in this report. We recommend that that draft Act, or a statute along the same lines, be enacted.

Recommendation 3

We recommend that the proposed statute generally be along the lines of the draft Incorporated Associations Act which is Part III of this report.

B. Associations which should be allowed to incorporate under the proposed statute

The Business Corporations Act is intended to regulate the incorporation and operation of business corporations. As we have said earlier, machinery which it provides is in many respects unsuitable for non-profit associations. That is why a separate statute is needed for the latter. This reason is pragmatic, not philosophical.

There is no reason to prohibit a non-profit association from incorporating under the Business Corporations Act if it wishes to

do so, and the BCA does not contain any such prohibition. There is, however, good reason to prevent business corporations -- corporations which are incorporated and operated for the direct pecuniary gain of their members -- from incorporating under the proposed non-profit associations statute. The reason is that many provisions of the BCA are needed for the protection of the economic interests of the members of business corporations.

Our proposal is that an association be permitted to incorporate under the proposed incorporated associations statute only if it submits to a restriction upon the distribution of its property and income to its members. The restriction would have to be of one of two kinds. The first would be a prohibition against distribution of the association's property and income to its members during the association's existence -- which we will call an "income distribution restriction". The second would be a prohibition against distribution of the association's property and income to its members both during the association's existence and at and after its liquidation and dissolution -- which we call "both an income and liquidation distribution restriction".

The test which we have suggested -- requiring no more than an income distribution restriction as a condition of incorporation under the proposed non-profit associations statute -- would lead to some anomalies. One is that incorporators who intend to engage in activities for personal gain could incorporate under the proposed statute if they were willing to wait until the corporate entity is liquidated before distributing the gain. Few, if any, incorporators would do so: they would gain little in exchange for accepting such a burdensome

restriction. We do not think it worth taking precautions against such an eventuality.

A second anomaly is that an income distribution restriction test would allow an association to be incorporated for the indirect pecuniary benefit of its members. A club which provides its members with better or cheaper service, for example, confers an indirect pecuniary benefit upon them. So, for another example, does a trade association which lobbies for changes in legislation or in trade regulation for the economic benefit of the members of the association. Pragmatically, however, such associations are not like businesses and we do not think that the law should insist that they use the machinery of the BCA.

A third anomaly is that an income distribution restriction test would allow an association to incorporate for profit-making purposes so long it cannot distribute its profits to its members. For reasons which we will give later in this memorandum, we do not think that such associations, so long as they have an income distribution prohibition, should be excluded from the proposed statute.

These anomalies exist today. Section 4 of the Societies Act merely prohibits an incorporated society from declaring a dividend or distributing its property among its members during the existence of the society. Sections 200 and 202 of the Companies Act merely require a company incorporated under those sections to satisfy the Registrar of Companies that it is the intention of the company to apply the profits, if any, or any other income of the association in promoting its objects and to prohibit the payment of any dividend to the members of the

company. We do not believe that they have given rise todifficulty or that our proposals will do so.

Recommendation 4

We recommend that an association which prohibits the distribution of income or property to its members during its existence be permitted to be incorporated under the proposed statute.

C. Purpose of Statute

We believe that the primary function of a non-profit corporations statute should be to provide efficient machinery for the incorporation and operation of non-profit associations. Included in that function is the provision of safeguards for minorities. Beyond that function the statute should not, as a general proposition, go.

In particular, we do not think that an incorporation statute should be used to regulate charities. If charities are to be regulated, they should be regulated elsewhere in the law, which can deal with unincorporated charities as well as incorporated charities.

Having stated that general principle, however, we propose to depart from it in a few particulars in which we think that the public interest in ensuring that money intended for charity goes for charity is particularly strong and that the association with corporation law and machinery is particularly close. These particular cases are as follows:

(1) the draft Act would require an incorporated association which has within the preceding 3 years solicited money

from the public or received a government grant (but not other associations) to provide more financial accounting to its members and to file financial statements with the Registrar of Corporations. This last requirement would provide a modicum of public accountability where public money is involved.

(2) the draft Act would require such an incorporated association to have at least 3 directors, while others would only have to have one director. This requirement would be a modest safeguard for the proper spending of public money.

(3) the draft Act would require an association which has both an income and a liquidation distribution restriction to obtain Court approval before changing its purposes, although an association with only an income distribution restriction would not need such approval. This would be a protection for those who give money or service for specific purposes.

(4) the draft Act would prevent an association with both an income and liquidation distribution restriction from dropping the prohibition against distribution of property to its members upon dissolution. This would also be a protection for those who give money or service for specific purposes.

There is another issue which we do not think should be dealt with by an incorporation statute, but which we mention because a specific case in which it was a concern has arisen while we have been engaged on this project. It is the issue of membership discrimination by an incorporated association on any of the grounds which have become the subject of anti-discrimination legislation. It is our view that this issue should be dealt with as a matter of general law dealing with every organization, incorporated or unincorporated, and that any attempt to deal with it through corporate constitutions would lead to confusion and would be ineffective.

Section 40 of the Judicature Act might be thought to conflict with this view. That section provides that "a person shall not be disqualified by sex or marriage...for admission to

an incorporated society". It is our opinion that this provision is intended only to remove the disqualifications which the general law imposed upon women in general and upon married women in particular and that it does not require a society incorporated under the Societies Act to admit members of both sexes. The point is discussed more fully in Appendix A. We do not make any proposal about section 40.

Recommendation 5

We recommend that the primary function of the proposed statute be to provide efficient machinery for the incorporation and operation of incorporated associations and for the protection of minorities, but that it provide a few safeguards in the case of associations which receive money from the public or from governments and associations which have both an income and liquidation distribution restriction to their members.

## D. Efficiency

We had hoped to prepare a short and easily comprehensible statute. We found, however, that a short and easily comprehensible statute would necessarily leave many important issues unresolved and many important questions unanswered. The draft Act is therefore quite bulky, though, we hope, reasonably comprehensible.

It is important that non-lawyers be able to operate the machinery of the proposed new statute: some substantial charities have ready access to legal advice, but many volunteer non-profit associations do not. We have tried to make the draft Act easier to follow than the Business Corporations Act, and we think that with proper administrative assistance -- particularly

with proper explanatory material -- groups will be able to incorporate and operate incorporated associations without difficulty. It is important that the needs of legally unsophisticated users be continually borne in mind by those who draft the proposed statute and by those who administer it.

Recommendation 6

We recommend that the proposed statute be made as easy to follow as possible and that administrative steps, particularly the preparation and delivery of explanatory material, be taken to ensure that incorporation and operation under it will be easy and will not usually require professional advice.

## E. Relationship of the proposed statute to the Business Corporations Act

The draft Act uses the basic concepts and terms of the Business Corporations Act, and much of its form and organization is similar to that of the BCA. There are two reasons for this. One is that the BCA is a modern and useful source of concepts, terms and drafting, much of which is suitable for incorporated associations. The second is that conceptual and verbal similarity between the BCA and the proposed statute will save time and cost for those who, being familiar with one, want to read and understand the other.

On the other hand, the draft Act departs from the BCA whenever a policy of the BCA is not appropriate for an incorporated association, and it also departs from it whenever a different wording or organization seems likely to be more comprehensible.

Recommendation 7

We recommend that the proposed statute use the basic concepts, terms, form and organization of the Business Corporations Act where, and only where, they are appropriate for incorporated associations.

F. Relationship to the income taxation system

Many non-profit groups want to be exempted from corporation and income tax. Many also want to be registered as charities so that donors may deduct donations to them from income or corporation tax.

Provincial law cannot confer tax-exempt or charitable status under the federal Income Tax Act. The Companies Act and the Societies Act do not do so. Neither will any statute which replaces them, including a statute such as the draft Act. Incorporated associations who want tax-exempt or charitable status will have to comply with the Income Tax Act. The achievement of such status being a legitimate objective, however, the proposed statute should not create any difficulties for an incorporated association which wants to achieve it.

Fortunately, it is not difficult to avoid creating such difficulties. Revenue Canada looks to the incorporating documents of a non-profit association to determine whether it meets the threshold requirements. All that the proposed Statute must do is to leave incorporated associations free to enter into such restrictions upon its activities as are necessary to conform to the Income Tax Act.

At present, a federal grant of tax-exempt or charitable status is recognized by Alberta income tax legislation. If that situation should change, it would be necessary to ensure that associations incorporated under the proposed statute could also meet the requirements of Alberta income tax legislation. The objective of the proposed statute should be to have enough flexibility to enable incorporated associations to meet any likely requirements of the taxation system, federal and provincial.

The meticulous requirements of the Income Tax Act and of Revenue Canada help to ensure that tax-exempt and charitable organizations apply their financial resources towards carrying out their objectives. The province should not, however, rely on the tax system to do its job for it, but should rather establish its own scheme which will carry out provincial policies in connection with incorporated associations. This report puts forward the scheme which we recommend be adopted by incorporation legislation.

In summary, the proposed statute should implement provincial policies and satisfy the interests of Albertans. It should not assume any particular federal or provincial income or corporation tax structure, nor should its form or content be distorted by tax considerations. However, it should provide an incorporation scheme which will allow Alberta incorporated non-profit associations to conform to current federal requirements for tax-exempt and charitable status and to any likely federal or provincial requirements. We believe that the draft Act would meet these criteria.

Recommendation 8

We recommend that the proposed statute provide an incorporation scheme which will allow Alberta non-profit incorporated associations to conform to current federal requirements for tax exempt and charitable status and to any likely federal and provincial requirements.

G. Classification of incorporated associations

Incorporated associations can be classified in a number of different ways. One is by size of membership. Another is by amount of assets or revenues. A third is by function, particularly whether an association is formed for the benefit of its members or for the benefit of others.

We first thought that a classification of incorporated associations into "membership" and "public benefit" (or "charitable") associations would be useful. The Federal Bill C-10 would have adopted such a classification and the Saskatchewan Act does so. We have, however, decided not to recommend it. First, the distinction is difficult to make. Second, associations which have a mixture of membership and public benefit purposes would be difficult to classify -- service clubs and religious and ethnic groups are examples. Third, we think that a statute can be devised which will work quite satisfactorily without making the distinction.

Instead, we recommend that where different treatment is desirable, it be effected by specific provisions. Our propose that an association be able to choose between a prohibition against the distribution of any property to its members at any

time and a prohibition only against the distribution of income and property during the association's existence is an example: "membership" associations would probably choose the latter and "public benefit" associations the former, but the choice would be theirs. Our proposal that an association which receives public money be required to file financial statements with the Registrar of Corporations but that other associations not be subject to that requirement is a second example. We think that this case by case approach would deal adequately with the different needs of different kinds of associations.

Recommendation 9

We recommend that the proposed statute

(a) not include any general classification of incorporated associations;

(b) require each association incorporated after the proposed statute comes into force to include in its articles of incorporation either an income distribution restriction (i.e., a provision that no income or property of the association shall be distributed to a member, officer or director of the association except on or after the liquidation of the association) or an income and liquidation distribution restriction (i.e., a provision that no income or property of the association shall be distributed to a member, director or officer either during the existence of the association or on or after its liquidation).

[Draft Act s. 5]

# CHAPTER 4. SPECIFIC POLICY ISSUES

## A. When property or income may be distributed to a member

We have recommended (see Recommendation 9) that the proposed statute require a new incorporated association to include in its articles of incorporation an income distribution restriction or both an income and a liquidation distribution restriction. This recommendation reflects a general policy against the distribution of property and income to members of an incorporated association. However, a more detailed statutory framework is needed, both to make the policy workable and to make it applicable to existing companies and societies which may not adopt the specific restrictions provided for in Recommendation 9.

We think that the proposed statute should require every incorporated association to use its property and profits to further its activities. While this might be enough by itself, we think that the proposed statute should specifically prohibit every incorporated association from declaring dividends and from distributing its income to its members during its existence.

There are, however, some cases in which turning over money or property to a member is consistent with carrying out the purposes of an incorporated association. Payment for goods, services or other valuable benefits or on account of expenses incurred or to be incurred is legitimate. So is financial assistance given to a member of an incorporated association as part of the association's work: an association established to help refugees should be able to help a refugee who is a member of the association, and a friendly association may provide funeral

expenses or financial assistance for a distressed member.

There are two other cases in which we think turning over money or property to a member of an incorporated association can be legitimate. One is the redemption of a membership interest in a case in which an incorporated association has only an income distribution restriction. The second is the transfer of funds or property from one incorporated association which has both an income and liquidation distribution restriction to a member which is itself a corporate body with similar purposes -- e.g., a transfer from a regional association to its provincial counterpart or vice versa.

Abuses can occur, but that is not a reason for prohibiting honest transactions. We think that the proposed statute should make it possible for an incorporated association to do any of the things mentioned in the two preceding paragraphs, but only if its articles of incorporation specifically authorize it to do so. There are two reasons for requiring the provision to be in the articles. The first is that such powers should be available only as part of understood ground rules. The second is that any of these powers might disqualify an incorporated association for tax exemption or charitable status under the Income Tax Act so that they should be conferred only on those incorporated associations which want them.

We think that the proposed statute should go on to deal with the distribution of an incorporated association's property upon liquidation. An incorporated association which has only an income distribution restriction should be able to say in its articles what should happen to its property, and if it does not

do so, the property should be shared equally among those who are its members at the time of dissolution. An incorporated association which has both an income and liquidation distribution restriction should be able to specify in its articles of incorporation either a similar corporate body which will receive its property or a purpose similar to a purpose of the association for which the property may be used, and failing such a provision, the Court should be able to distribute the property for a similar purpose.

Again, an incorporated association may be disqualified for tax exemption or charitable status under the Income Tax Act if the provisions of its articles of incorporation about the distribution of its property upon liquidation or dissolution do not conform to that Act. The scheme which we have suggested, however, is flexible enough to allow an incorporated association to conform.

We think that this scheme is sufficient. It does not specifically deal with the problem of property of an incorporated association which is overlooked at the time of the association's dissolution. However, the association could be revived under the revival provisions of the draft Act if these are included in the proposed statute, and we think that that is sufficient.

Recommendation 10

We recommend that the proposed statute

(a) prohibit an incorporated association from declaring dividends and distributing income to its members during its existence;

(b) permit the articles of incorporation of an incorporated

association to authorize the incorporated association

(i) to pay a member a reasonable price or remuneration for goods, services or other valuable benefits provided by the member, and

(ii) to give financial assistance to a member as part of the goods, services or other valuable benefits provided by the member, and

(iii) to give financial assistance to a member as part of the incorporated association's activities.

(c) prohibit an incorporated association from giving financial assistance to a member, director or officer except as provided above.

(d) permit the articles of incorporation of an incorporated association which has only an income distribution restriction to authorize it to redeem a membership interest in the incorporated association;

(e) permit the articles of incorporation of an incorporated association which has both an income and liquidation distribution restriction to distribute property to a body corporate with similar purposes even though the body corporate is a member of the incorporated association.

[Draft Act s. 6, 18, 76]

Recommendation 11

We recommend that the proposed statute provide that upon liquidation

(a) the property of an incorporated association which has only an income distribution restriction be distributed according to the articles of incorporation, or, failing a provision dealing with distribution, divided equally among those who are members at the time of dissolution;

(b) the property of an incorporated association which has both an income and liquidation distribution restriction be

used for similar purposes (including distribution to a body corporate with similar purposes) designated by the articles of incorporation, or, failing such designation, designated by the Court.

[Draft Act s. 19, 20, 21]

B. Purposes for which an association may be incorporated

A non-profit corporation can now be incorporated under the Societies Act or the Companies Act only for certain kinds of purposes, which include charitable purposes, the advancement of learning, and clubs, though the lists in the two statutes end with "or other useful purpose" and "or any other useful object" respectively.

We do not think that the new statute should impose any such limits. We have a number of reasons for this view. First, we think that the law should allow people to incorporate without having to obtain the approval of an official. Second, the principle that anyone can incorporate for any purpose is already conceded: it is embodied in the Business Corporations Act. Third, a non-profit association which did not have one of a list of approved purposes could incorporate under the BCA, and driving it to do so would not serve any useful purpose. Fourth, incorporation does not signify any social or governmental approval of the incorporated entity or its purposes. Fifth, a corporation is as much subject to the law of the land as are its members,

so, incorporation would not enable an incorporated association to further an illegal purpose.

For the same reasons, we do not think that the Registrar should have, as he now has under the Societies Act, the power to "refuse incorporation for any reason that appears to him to be sufficient". Rather, he should be obliged, as he is now obliged under the Business Corporations Act and (with one minor exception) under the Companies Act, to issue a certificate of incorporation if the proper documents and fees are delivered to him.

Recommendation 12

We recommend

(a) that the proposed statute not place any restriction upon the purposes for which associations may be incorporated under it, and

(b) that the Registrar be obliged to issue a certificate of incorporation for an incorporated association if the proper documents and fees are delivered to him.

[Draft Act s. 2]

C. Incorporating for the purpose of carrying on business

One specific question should be considered: should an incorporated association be able to carry on a business for gain, so long as that gain is not distributed to its members? The answer of the Societies Act is no. The answer of the Companies Act is yes.

Some non-profit associations operate thrift shops, bake-sales and casinos in order to raise money to fund charitable activities. There is no reason to prohibit this sort of activity by incorporated associations. Other non-profit associations operate clubs or other facilities which, if they were not in effect owned by the members, would clearly be businesses. There is no reason to exclude such organizations from the proposed statute.

There are more difficult cases. One example is an association which, according to one description given to us, "is to create an employment opportunity where the employees have a stake and a say in the work place and the future of the company". A different example is a community development corporation which is set up to create employment in the community by fostering profitable businesses.

We do not see any reason to exclude such associations from the proposed statute, so long the distribution of profits to their members is prohibited by an income distribution restriction. Requiring them to incorporate under the Business Corporations Act would not, so far as we can see, serve any useful purpose. Incorporation under the proposed statute would not give them any competitive advantage or better access to government grants or subsidies.

Recommendation 13

We recommend that the proposed statute not prohibit an incorporated association from carrying on business for a profit so long as the association is prohibited from distributing income or property to its members during its existence.

D. Statement of purposes and constitutional restrictions

Although we think that no limitation should be put on the purposes for which an association may be incorporated under the proposed statute, we think that an association should have to say what its purposes are, and that it should have to say it in its constitutional documents. This is primarily so that the members can know what the authorized area of activity for the incorporated association is and so that, if necessary, they can take legal action to stop the association from acting for other purposes. For the same reason, we think that an incorporated association should through its articles of incorporation be able to impose limitations upon its activities.

The Business Corporations Act does not require that the purposes of a corporation be stated. We think, however, that for this purpose there is a material difference between a business corporation and an incorporated association. A business corporation is formed for the generalized purpose of economic gain for its members and economic efficiency is best served by leaving it free to do whatever is profitable. A non-profit association, however, is usually formed for a specific purpose, to which its members and, in the case of a charity, those who have donated money and effort to it, should be able to confine its activities.

The protection would not be absolute. First, our proposals would allow an incorporated association to change its stated purposes by a special resolution adopted by two-thirds of the votes cast (though, in some cases, only with the leave of the Court). Second, incorporators would be able to state the

purposes in very broad terms so that the incorporated association would not be confined at all. We think, however, that the requirement of a statement of purposes would allow the wary to protect themselves and would give significant protection to many of the unwary.

Recommendation 14

We recommend

(a) that the articles of incorporation of an incorporated association be required to state the purposes for which it is incorporated and that an incorporated association be required to act within its stated purposes; and

(b) that an incorporated association be able to impose restrictions upon its activities by provisions in its articles of incorporation.

[Draft Act s. 4]

E. Powers of an incorporated association

Under the Companies Act -- and the same rule applies to a society -- a company has no power to do anything except for the purpose of carrying out its stated objects. This ultra vires rule has has enabled many companies to escape from contracts without good reason. The Business Corporations Act abolishes the rule by providing that a corporation incorporated under that Act has the capacity of a natural person. We recommend that the proposed incorporated associations statute do the same.

We have recommended above that an incorporated association be required to state its purposes in its constitutional documents and that it be required to act within its stated purposes. One worry about that recommendation is that it might bring the ultra

*vires* rule in through the back door.

We do not think that it will. Under section 16(1) of the draft Act, the provision about capacity and powers would override the provisions about purposes, and, under section 16(4), an act of an incorporated association would not be invalid merely because the association had acted outside its purposes. We think that these provisions would mean that an incorporated association could not escape liability by the *ultra vires* rule.

Provisions of the BCA have much the same effect. BCA Section 16(2) prohibits a corporation from carrying on a business that it is restricted from carrying on by its articles and from exercising its powers contrary to its articles. BCA section 16(3) provides that an act of the corporation is not invalid merely because the corporation has acted outside its purposes. No problem has arisen under those provisions.

Recommendation 15

We recommend:

(a) that an incorporated association have the legal capacity of a natural person;

(b) that an incorporated association be prohibited from exercising its powers except for the purposes stated in its articles of incorporation;

(c) that no act of an incorporated association be invalid by reason only that it is contrary to the articles of incorporation or to the proposed statute.

[Draft Act s. 16]

F. Constitution of an incorporated association

The Business Corporations Act requires a corporation to have articles of incorporation. The articles must set out the corporation's name and capital structure. The proposed statute should also require an incorporated association to have articles of incorporation. The articles should state the incorporated association's name, purposes and membership structure. They should also include either an income restriction or an income and liquidation restriction on the distribution of its property. Such provisions would be efficient and would maintain harmony between the proposed statute and the BCA. Like the BCA, the proposed statute should allow an incorporated association to put into its articles other things which it wants to entrench.

The BCA allows a corporation to have by-laws, but does not require it to do so. However, many incorporated associations, unlike most business corporations, are incorporated and operated without legal advice or assistance, and we think it important that they have by-laws to regulate their activities and that those by-laws be available to their members. We therefore think that the proposed statute should require an incorporated associations to have by-laws which regulate the activities of the association.

Unless there are strong policy reasons to the contrary, the law should allow an incorporated association the greatest possible freedom to manage its own affairs. The proposed statute should therefore permit an incorporated association to adopt whatever by-laws it wishes, subject to some specific statutory requirements. But legally unsophisticated incorporators should not be left to devise by-laws unaided. These considerations

appear to be in conflict.

We think that there is a satisfactory solution to the apparent conflict. The proposed statute should provide for by-laws to be prescribed by ministerial regulation. It should go on to provide that the prescribed by-laws will be the by-laws of an incorporated association but that the incorporated association may adopt its own by-laws which will then supersede the prescribed by-laws. Incorporators could then acquiesce in the prescribed by-laws if they did not wish to devise their own, or they could adopt a partial or complete set of their own; and the incorporated association would be free to make a different choice at any time.

With some exceptions, an incorporated association should be able to make such changes to its constitution as it wishes, though only by special resolution, i.e., a resolution passed at least by a resolution approved by two thirds of the votes cast. It should be able to adopt, amend or repeal any by-law. It should be able to change almost everything in its articles of incorporation.

One exception is that an incorporated association should not be able to relax an income and liquidation restriction on distribution of property to its members. Another is that an incorporated association with such a restriction should be able to change its purposes only with the leave of the Court. A third is that any change of name should conform to the usual restrictions on corporate names.

The articles of incorporation would deal with the fundamental legal characteristics of an incorporated association. A change in those characteristics should not be effective until the Registrar of Corporations, having received the documents prescribed by the proposed statute, issues a certificate of amendment.

The by-laws would deal with subjects which would be of less fundamental and public importance, and a good argument can be made for providing that they need not be filed with the Registrar, particularly as the proposed statute would require an incorporated association to keep a copy of its by-laws at its records office and make them available to a member of the association for inspection upon demand. This argument can be buttressed by pointing to the trouble and cost which a requirement of filing would impose upon incorporated associations and the expense involved in the reception and retention of the by-laws by the Registrar. Nevertheless, we think that incorporated associations should be required to file with the Registrar any by-laws and changes in by-laws which they adopt, and that a by-law or a change in a by-law should not be effective until it is sent to the Registrar. There would then be a public record of all departures from the prescribed by-laws, which would be particularly valuable in view of the sporadic nature of much of the record-keeping of incorporated associations and in view of the frequent changes in officers and registered offices. We think that the public filing would be a useful protection for members of incorporated associations.

Recommendation 16

(1) We recommend

(a) that the constitution of an incorporated association consist of

(i) articles of incorporation setting out the name, purposes and membership classes of the incorporated association, either an income distribution restriction or an income and liquidation distribution restriction, and such other things as the association wishes to entrench; and

(ii) by-laws regulating the affairs of the association;

(b) that an incorporated association be free to adopt its own by-laws, but that by-laws be prescribed by ministerial regulation which will apply to anything not covered by by-laws adopted by the incorporated association.

(2) We recommend that an incorporated association be able to change by special resolution any provision of its articles of incorporation or by-laws except as follows:

(a) an incorporated association which has both an income and liquidation restriction on distribution of property to members should not be able to

(i) change its purposes without leave of the Court, or

(ii) relax the restriction at all; and

(b) a change of name should have to conform to the usual rules about names.

(3) We recommend that

(a) a change in an incorporated association's articles of incorporation have no effect until the Registrar of Corporations issues a certificate of amendment; and

(b) a by-law or change in by-law adopted by an incorporated association have no effect until it is sent to the Registrar of Corporations.

[Draft Act s. 3, 4, 38, 39, 40, 78]

G. Incorporation of a new incorporated association

The incorporation procedure outlined in the Business Corporations Act is simple and efficient. We see no reason to devise a different procedure for the proposed statute.

Recommendation 17

We recommend that incorporation under the proposed statute be effected by

(a) the sending to the Registrar of Corporations of articles of incorporation, materials concerning the proposed incorporated association's name, notices of registered office and directors, and the proper fees, and

(b) the issuing by the Registrar of a certificate of incorporation.

[Draft Act s. 3, 8]

H. Bringing existing companies and societies under the statute

Every Companies Act business corporation was required to "continue" under the Business Corporations Act. "Continuance" meant the filing of "articles of continuance" which were in essence a new corporate constitution conforming to the BCA. This was the way in which the BCA was made applicable to existing corporations.

"Continuance" was required because of the differences between the requirements of the Companies Act and the requirements of the BCA. Much the same differences exist between the requirements of the Companies Act and the Societies Act, on the one hand, and the requirements of the proposed statute on the

other. This circumstance would suggest that existing non-profit companies and societies should be required to "continue" under the proposed statute by filing "articles of continuance".

There are, however, differences between business corporations and incorporated associations. One of the great worries about the introduction of the BCA was that new ground rules might damage protective structures which had been erected to protect economic interests under the old ground rules, and transitional safeguards against such damage were provided. The first point to note is that danger of such damage is much less in the case of incorporated associations.

The second point to note is that the difficulties which mandatory "continuance" would impose upon existing non-profit companies and societies would be more inhibiting. Most of them lack legal advice, and, while efforts could be made to devise simple forms and explain them in clear language, we do not think that the changeover to a new law should make the lot of volunteer organizations more difficult unless there is a clear and present need to do so.

We do not believe that there is a clear and present need for mandatory "continuance" which should override the interest of companies and societies in being left alone. There is an alternative. It is for the proposed new statute to apply automatically to existing non-profit companies and societies. While the adoption of this alternative may cause some difficulties in the future, we think that the acceptance of the risk of future difficulties would, on balance, be better than acceptance of the cost and difficulty of mandatory continuance.

Accordingly, the draft Act provides, in effect, that the memorandum and articles of association of a non-profit company would become articles of incorporation and by-laws under the draft Act, and that the same thing would happen to the application and by-laws of a society incorporated under the Societies Act. Of course, if a non-profit company or society should decide that the enactment of the proposed statute is a suitable occasion to review and revise its corporate constitution, this would be easy enough to do: it could simply adopt a new one by special resolution.

The choice between automatic and mandatory "continuance" is not free from doubt. If it were thought better to require mandatory "continuance", every effort should be made to provide a simple form and to explain the procedure in clear language so that non-profit companies and associations will be able to "continue" with the least possible difficulty. All that should be required is "articles of continuance" in much the same form as the articles of incorporation which would be required by the draft Act: the articles of association of a non-profit company and the by-laws of a society should be recognized as by-laws under the proposed statute. We would be happy to prepare detailed recommendations for the forms and for the procedure to be followed.

Recommendation 18

We recommend that the proposed statute

(a) apply automatically to existing non-profit companies and associations incorporated under the Companies Act and Societies Act respectively, and

(b) recognize the constitutional

documents of such companies and societies as the articles of incorporation and by-laws required by the proposed statute.

I. Names of incorporated associations

We think it desirable that the name of an incorporated association tell an outsider that the association is incorporated. That is primarily because incorporation carries limited liability with it, and it is only fair that the existence of limited liability should be disclosed to outsiders. The Societies Act, however, does not insist upon the use of words which clearly signify incorporation, and under Part 9 of the Companies Act many non-profit companies are exempted from using the word "limited".

The Business Corporations Act does require a distinctive label: the last word in a business corporation's name must be "limited", "incorporated" or "corporation" or an abbreviation of one of those words. We think that the BCA principle is right and we propose that any new incorporated association be required to include in its name either the words "Incorporated Association" or the abbreviation "I.A.". Either would alert outsiders to the true nature of the entity, and either would distinguish an incorporated association from a business corporation. The abbreviation would be strange at first but would come to be known as the badge of an incorporated association.

Should the same requirement apply to existing societies and non-profit companies? On the one hand, the reasons for requiring a badge of incorporation apply to existing as well as to new

incorporated associations, and leaving 13,000 existing associations outside the requirement would detract from the effect which the requirement would be intended to achieve. On the other hand, associations which have established names might well be disturbed by having to make even a formal change, and expense might well be incurred in connection with stationery, advertisements, stamps, seals and other things.

We think that the best balance would be struck by making two provisions. The first is that the names of those non-profit companies or societies which include "Association", "Foundation", "Society", or "Centre" be allowed to remain unchanged. The second is that existing non-profit companies and societies be given 3 years to change their names to conform, and that the proposed statute then add "(I.A.)" at the end of the name of every one which does not do so.

Turning to more general matters, we think that the proposed statute should provide a general scheme to avoid the use of identical or confusingly similar names by two incorporated associations. The Business Corporations Act provides such a scheme, which we think is generally satisfactory and should be adopted by the proposed statute. In one respect, we think that the proposed statute should go further than does the BCA: we think that an incorporated association should not be permitted to use a name similar to that of an unincoporated association if the use would be confusing or misleading: in this respect we prefer the precedents of the Companies Act and the regulations under the Canada Business Corporations Act, which protect the names of unincorporated associations, to the precedent of the Alberta

Business Corporations Act, which does not. The proposed statute should also provide for regulations about the names of incorporated associations. As in the case of the BCA, the whole scheme of names should be administered by the Registrar of Corporations subject to rights of appeal to the Court of Queen's Bench.

Recommendation 19

We recommend:

(a) that an association incorporated after the proposed statute comes into force should be required to have the words "Incorporated Association" or the abbreviation "I.A." (which could appear in brackets) at the end of its name;

(b) that the names of those non-profit companies and societies which include "Association", "Foundation", "Society", or "Centre", be allowed to remain unchanged;

(c) that after 3 years, the proposed statute should add "(I.A.)" at the end of the name of every existing company or society which has not changed its name to conform to Recommendation 19(a) and which is not referred to in Recommendation 19(b);

(d) that the proposed statute should provide a scheme similar to that of the Business Corporations Act to preclude the use of identical or confusingly similar names by incorporated associations, and that the statute should provide for regulations on the same lines as those under the BCA; and

(e) that the proposed statute should in addition prohibit the use by an incorporated association of a name identical or similar to the name of an unincorporated association, if the use would be confusing or misleading.

[Draft Act s. 12, 13, 14]

J. Membership and share capital

Share capital regulates the control of a business corporation. It also regulates the distribution of gains and of capital. These latter functions do not sit well with the notion of a non-profit corporation, and many non-profit corporations statutes therefore do not allow a non-profit corporation to have share capital.

Some private clubs now have share capital, however, and it is at least a convenient device for the transfer of memberships. Also, we are told that some private charitable foundations find share capital a useful device for the transfer of control from the founder to another generation of the family. No doubt, other devices could be devised to perform functions of this kind. We think, however, that people should be left as free to manage their affairs as possible, given no compelling contervailing consideration, and we do not see anything philosophically wrong with the use of this particular device so long as it is not used to distribute gains to the members. We therefore think that an incorporated association should have share capital if it wants it, and we so recommend. Most of the provisions of the Business Corporations Act relating to shares, share certificates, share transfers and share registers should apply to an incorporated association which has share capital.

We think that, in general, the proposed statute should leave each incorporated association to work out for itself questions about admission to membership, transfer of membership and termination of membership. It should, however, require each incorporated association to address the subject. Under the draft

Act, the articles of incorporation would have to provide for the class or classes of memberships in the association and the by-laws would have to deal with admission to, and transfer and termination of, memberships.

The termination of a person's membership in a non-profit corporation without compensation can subject him to harsh economic consequences. Nevertheless, we do not think that the statute should intrude into private affairs by attempting to regulate the general conditions of membership established by an incorporated association.

We do think, however, that if an incorporated association confers upon anyone the power of terminating memberships (as differentiated from providing for automatic termination by lapse of time or failure to attend meetings or to pay levies), the power should be exercised in accordance with natural justice. While the term "natural justice" may appear forbidding to non-lawyers, we think that the exercise of a power of termination of membership is one case in which some statutory safeguard is needed, and we think that an attempt to use other words to define the requirements which must be met would result in rigidity and in greater confusion.

Recommendation 20

We recommend

(a) that the proposed statute

(i) permit an incorporated association to have a capital divided into shares

(ii) apply to an incorporated association which has a capital divided into shares the relevant

provisions of the Business Corporations Act about shares and about share certificates, transfers and registers.

(b) that the proposed statute require every incorporated association to have its articles of incorporation establish the classes of memberships and as a minimum provide for one class of members who are entitled to vote at all meetings;

(c) that the proposed statute require every incorporated association to have its by-laws deal with admission to and transfer and termination of memberships; and

(d) that the proposed statute provide that any power of termination of membership (as distinguished from a provision which operates automatically) must be exercised in accordance with natural justice.

[Draft Act s. 29, 30, 33]

## K. Directors

### (1) Requirement of directors

A corporate body, being a legal abstraction, cannot act by itself or make decisions by itself. This fact has external consequences for those who deal with a corporate body, who need to know who is responsible for the corporate body and can act on its behalf. It has internal consequences for the members, who need to know how the activities of the corporate body are to be authorized and carried on. These considerations apply to incorporated associations in much the same way as they apply to other corporate bodies.

The institution of directors has been evolved to meet both external and internal needs. For external purposes, the Business Corporations Act, the Companies Act and the Societies Act all require the corporate bodies which are governed by them to have directors and to file lists of them annually with the appropriate corporate registry. We think that the proposed statute should do the same.

For both external and internal purposes, corporation statutes and corporate constitutions generally provide for directors who have the power and the duty of managing the activities of the corporation. The Business Corporations Act emphasizes the powers of directors: subject only to a unanimous shareholder agreement, BCA section 97 provides that the directors "shall manage the business and affairs of a corporation". The Societies Act is silent on the subject of directors' powers and duties, though it defines "director" to mean "any person occupying the position of director by whatever name called" and thus appears to recognize that directors are known to the general law and have a recognized position. The Companies Act does not define the powers of directors generally, though the articles of association in Table A of the Act provide that the business of a company shall be managed by the directors.

We recommend that the proposed statute provide that the directors shall manage the affairs of an incorporated association, but that it make this provision subject to what is in the incorporated association's articles of incorporation and by-laws. Such a provision would confirm the usual practice of having directors. It would, however, provide some flexibility.

An incorporated association would have to have directors and it would have to list in its annual return all those who do what directors normally do, but, subject to that, it would be able to adopt articles and by-laws which would allow its internal affairs to be run as it wishes.

(2) Number of directors

We think that in general there is no reason to require an incorporated association to have more than one director. However, if an incorporated association has solicited public money or received a government grant within the preceding 3 years, we think that it should have to have at least 3 directors, as some modest protection for the public interest in having public money properly applied.

(3) Qualifications of directors

Section 100 of the Business Corporations Act lists some disqualifications for directors: minority, bankruptcy, and mental incompetence. It disqualifies a person who is not an individual, i.e., who is a corporation. It requires that half of the directors be Alberta residents.

We think that in the case of an incorporated association the question of qualifications and disqualifications should be left to the by-laws. We do not think that there is a public policy which should override the choice of the members. The public policy upon which the BCA requirements of Alberta residency does not apply because the economic effect upon Alberta of decisions made by Alberta non-profit associations is not as significant as

the economic effect on Alberta of decisions made by Alberta business corporations.

(4) Election and removal of directors

We think that in general the election and removal of directors and the length of their terms of office should be dealt with by an incorporated association's by-laws. The proposed statute should, however, do two things. The first is to provide that the members of an incorporated association would be able to remove a director despite anything in the by-laws. The second is to provide that a director's term could not be longer than the time from his election to the third annual meeting following his election (though there is nothing to stop a director from being re-elected).

(5) Duties and obligations of directors and officers

At common law, directors were treated almost as fiduciaries. A contract with a corporation in which a director had an interest was subject to being held voidable at the corporation's option, and the director was liable to account for any profits which he received from it. This was unduly harsh, because it applied even to contracts which were in the corporation's interest. On the other hand, the corporation's constitution could authorize such contracts without providing safeguards against abuse, and the majority could ratify such contracts at general meetings. This was unduly lax, because it applied even to contracts which were not in the corporation's interest.

Section 115 of the Business Corporations Act is intended to strike a better balance. If a director discloses his interest in a contract and does not vote on the contract, the contract is not voidable and he is not accountable for benefits which he receives under it. We think that the proposed statute should follow the BCA in this respect, and the draft Act does so.

We think that the proposed statute should also follow the BCA by allowing an incorporated association to indemnify its directors against liabilities incurred by them as directors other than liabilities to the incorporated association, and by allowing an incorporated association to obtain insurance for its directors against all liabilities incurred by them as directors other than liabilities resulting from failure to act honestly and in good faith with a view to the best interests of the incorporated association.

BCA section 117 imposes two general duties on directors. The first duty is to act honestly and in good faith with a view to the best interests of the corporation. We think that the proposed statute should impose the same duty on the directors of an incorporated association. Anyone who undertakes to pursue the agreed common goals should do so honestly.

The second duty imposed by BCA section 117 is to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Our first thought was that such a duty would not be appropriate for volunteer directors whose usual undertaking is to try to achieve the common non-economic goals of its members, but we have in the result decided to recommend that the proposed statute should follow BCA

section 117. The principal reason is that the common law on the point is confusing and may impose an unduly high standard of care on directors with special qualifications. A secondary reason is that we think it likely that, in deciding what are the "comparable circumstances" which would determine the standard of care to be applied, a court would in a proper case take into consideration the volunteer nature of an incorporated association.

We do, however, go on to propose that the Court have power to exonerate from liability a director who has failed to carry out the duty of care, diligence and skill. This power would be similar to the power to exonerate a trustee given by section 41 of the Trustee Act.

The disclosure provisions and the duties of honesty and good faith and of care, diligence and skill should, we think, apply to officers as well as to directors, and so should the provisions about indemnification, insurance and disclosure.

There is a final question. Should the directors be liable for the wages of employees? The BCA says yes up to six months' wages, but subject to a special limitation period and to a defence that a director reasonably thought that the corporation could pay its debts as they fell due. The Societies Act says nothing and therefore says no.

The liability of a business corporation's directors for wages derogates from the limited liability upon which corporation law is founded, but it may possibly be justified on the grounds that there is a special responsibility towards employees and that

directors should therefore see paid the employees from whose services they hope that the corporation, and therefore they themselves, will benefit. That justification is much less forceful in the case of a non-profit association with an income distribution restriction, and it does not apply at all to an incorporated association which also has a liquidation distribution restriction. Further, section 108 of the Employment Standards Act deals with the liability of directors and officers for wages, and that seems to us to be the appropriate place to deal with the subject. We do not think that the proposed statute should impose any obligation for wages upon the directors of an incorporated association.

Recommendation 21

We recommend:

(a) that an incorporated association be required to have at least one director, and that an incorporated association which has within the preceding 3 years solicited money from the public or received a government grant be required to have at least 3 directors;

(b) that the term of a director of any incorporated association be required to end no later than the third annual meeting following his election;

(c) that the members of an incorporated association be empowered to remove a director at any time by ordinary resolution; and

(d) that, subject to those limits, the election, removal and term of office of directors be left to the by-laws.

[Draft Act s. 41, 43]

Recommendation 22

We recommend

(a) that the proposed statute provide that the directors shall manage the activities and affairs of an incorporated association, but that the provision be subject to the statute and to the articles of incorporation and the by-laws of the association;

(b) that the proposed statute require the directors (a) to act honestly and in good faith with a view to the best interests of the corporation, and (b) to exercise the standard of care, diligence or skill which a reasonable person would exercise in comparable circumstances;

(c) that if it appears that a director or officer has acted honestly and in good faith with a view to the best interests of an incorporated association, or, in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful, a court may relieve the director or officer wholly or partly from liability for a breach of the duties described in Recommendation 22(b);

(d) that the proposed statute provide that upon proper disclosure and abstention from voting by a director or officer of an incoporated association a contract in which the director or officer is interested will be valid and the director or officer will not be liable to account to the incorporated association for profits received under the contract; and

(e) that the proposed statute permit an incorporated association

> (i) to indemnify a director against liabilities incurred by him as a director other than liabilities to the association itself, and
>
> (ii) that it permit the association to obtain insurance for a director against liabilities incurred as a director other than for breaches of the director's duty of good faith to the association.

[Draft Act s. 47, 48, 49, 50]

L. Financial affairs

We think that the proposed statute should treat an incorporated association which has within the past 3 years solicited money from the public or received a government grant in much the same way as the Business Corporations Act treats a distributing corporation: a soliciting incorporated association should have to provide financial statements as required by regulations; it should have to provide comparative financial statements for the preceding financial period or give a reason why it does not do so; it should have to mail a copy of the financial statements to its members before each annual meeting or alternatively advertise that the statements are available at its registered office; it should have to file its financial statements with the Registrar of Corporations after every annual meeting, where they will be open to inspection by members of the public; and it should have to have an auditor who will give an opinion on the financial statements in the usual form. These provisions would help to protect members of such incorporated associations and impose a modest amount of public accountability for money raised from the public and the public sector.

We think, however, that one qualification should be made. The audit requirement would be unduly onerous for an unincorporated association which had received a small government grant or raised a few hundred dollars by a public appeal. We think that some exemptions should be made but that they should not be made inflexible by embodying them in the proposed statute.

Our proposal is that regulations provide for exemptions, probably, but not necessarily, based upon dollar amounts. We would be pleased to participate in the formulation of the regulations.

Any other incorporated association should be relieved of the duty of providing comparative financial statements, the duty to mail statements before the annual meeting, and the duty to file statements with the Registrar of Corporations. It should be able, by resolution adopted by a two-thirds majority, to choose to have a member or other person examine the financial statements rather than to have a formal audit (though a member should be able to apply to the Court in such a case to have an auditor appointed). It should be able, by resolution consented to by all members, to dispense with an auditor entirely.

There are two points upon which we would depart from the BCA. First, BCA section 162(1) entitles an auditor to attend every meeting of shareholders at the expense of the corporation, but because of fears expressed to us we have deleted the reference to expense from the draft Act and provided instead that the auditor is entitled either to attend a meeting or to have a statement read. Second, BCA section 162(2) entitles any member to require the auditor to attend a meeting at the corporation's expense, but because of fears expressed to us about the possibility that a member will use the right as a means of causing embarrassment to an incorporated association, we have added a provision which would allow the Court to grant an exemption to the auditor from attending and to the incorporated association from paying expenses.

Recommendation 23

We recommend that the proposed statute require every incorporated association to keep financial records and present financial statements for consideration at every annual meeting of the members, the standards to be prescribed by regulation.

Recommendation 24

We recommend that in addition the statute require every incorporated association which in the past 3 years has solicited public funds or received a government grant to

(a) provide its members with comparative financial statements for the preceding financial period,

(b) circulate financial statements to its members 21 days in advance of each annual meeting, or alternatively advertise that the financial statements can be inspected at the registered office, and

(c) file a copy of its financial statements with the Registrar of Corporations.

[Draft Act s. 27, 63]

Recommendation 25

We recommend that

(a) subject to Recommendation 25(b), and subject to exemption by regulation where the amounts involved are small, the proposed statute require every incorporated association to appoint an auditor and that it require the auditor to make the examination that is in his opinion necessary to enable him to report in prescribed form, but that

(b) the proposed statute permit an incorporated association which has not in the past 3 years solicited public money or received a government grant

(i) in lieu of appointing an auditor, to appoint an independent member of the incorporated association or other person to review the financial statements and

report to the annual meeting, the resolution to be adopted by a majority of two thirds of the votes cast, or

(ii) by resolution consented to by every member of the incorporated association, to resolve not to appoint an auditor;

(c) that a resolution under Recommendation 25(b) be effective only for one year;

(d) that a member have the right to apply to the Court for the appointment of an auditor apply despite a resolution under Recommendation 25(b)(i) but not if a resolution has been adopted under Recommendation 25(b)(ii).

[Draft Act s. 68, 71]

M. Amalgamation

We had thought that amalgamation machinery was unnecessary. It was, however, suggested to us in consultation that there are situations in which the amalgamation of incorporated associations is highly desirable. The proposed statute should therefore provide for it. It should in general follow the amalgamation provisions of the Business Corporations Act, but neither the short-form provisions nor the provision for amalgamation with an extra-provincial corporation is appropriate.

Recommendation 26

We recommend that the proposed statute provide for the amalgamation of an incorporated association with other Alberta incorporated associations.

[Draft Act s. 84-87]

N. "Continuance" from one jurisdiction to another

We had thought that provisions allowing an extra-provincial non-profit corporation to transfer its registration to Alberta and allowing an Alberta non-profit corporation to transfer its registration to another jurisdiction were unnecessary. Again, we were in consultation given an example in which an association wanted to continue under federal legislation and was frustrated by its mobility to do so. While this may not show a widespread need, we are inclined to think that the machinery should be provided for those who do need it. The proposed statute should therefore provide for both kinds of transfer. The BCA provisions are satisfactory and should be followed.

Recommendation 27

We recommend that the proposed statute provide for the continuance under it of an extra-provincial non-profit corporation and for the continuance of an incorporated association under the non-profit corporations statute of another jurisdiction.

[Draft Act s. 88,89 ]

O. Remedies

(1) Investigation

The Business Corporations Act gives the Court of Queen's Bench power to appoint an inspector to investigate the affairs of an incorporated association if there is reason to think that fraud, dishonesty or oppression is involved in the activities, or even in the establishment, of the association. The Court can confer on the inspector compulsory powers to get the necessary

information. The report of the inspector does not have any legal effect other than being admissible in evidence, but it provides information upon which other proceedings could be based. We think that the power is a useful protection for members of incorporated associations and for public interest and that the proposed statute should follow the BCA in this respect.

We think that any present member of an incorporated association should be able to apply for an investigation, and that (so that those in control could not avoid an investigation by ejecting a member), a member's right to apply should continue for a year after the termination of his membership. The Registrar of Corporations should also be able to apply if the incorporated association has both the income and liquidation distribution restrictions. Historically the Attorney General has had power (the parens patriae power under the royal prerogative) to take steps for the supervision of charities, but, assuming that the Registrar is given resources and access to legal advice and investigatory services, his closer association with the regulation of corporations suggests that the balance of convenience would be best served by conferring a similar power on him, at least unless the Attorney General wishes to exercise it on appropriate occasions. (We do not see any need for the statute to interfere with the Attorney General's prerogative power.)

Recommendation 28

We recommend

(a) that a member of an incorporated association or a person who has been a member in the preceding year be entitled to apply to the Court for an order

appointing an inspector to investigate the affairs of the association;

(b) that in the case of an incorporated association which has both an income and liquidation property distribution restriction, the Registrar of Corporations also be entitled to apply for such an order, and that resources be made available to enable the Registrar to perform this function on appropriate occasions.

(c) that the Court have power to make the order if there are sufficient grounds for conducting an investigation to determine whether there has been fraud, dishonesty or oppression;

(d) that the Court have power to give the inspector compulsory powers for the acquisition of information; and

(e) that the inspector's report be admissible in evidence.

[Draft Act s. 93-103]

(2) Compliance orders and derivative actions

Section 240 of the Business Corporations Act gives the Court power to direct a corporation, its directors and officers and others, to comply with the Act, the regulations, the articles of the by-laws. We think that the proposed statute should include a similar provision for the protection of incorporated associations and their members.

BCA section 232 allows a "complainant" -- a present or former member of an incorporated association; a present or former officer or director of a business corporation or its affiliates or anyone whom the Court thinks to be a proper person to apply for the Court's leave to bring or to intervene in an action on behalf of the corporation. A complainant who wishes to assert a

derivative claim must first give the directors a chance to act, and the Court must be satisfied that the complainant is acting in good faith and that his proposal appears to be in the best interests of the corporation. Because it is a claim of the corporation which a complainant puts forward or defends, the remedy is referred to as a "derivative" remedy.

The purpose of the BCA provision is to let shareholders take steps when the directors are not properly looking after the corporation's interests. The provision gets over procedural difficulties which shareholders had at common law in protecting the interests of corporations -- frequently against the directors themselves -- and we think it is a good thing and that the proposed statute should follow the BCA in this respect.

BCA section 234 allows a "complainant" to sue on his own behalf if the rights of shareholders, directors, officers or creditors are being oppressively or prejudicially affected by a business corporation or its directors.The section is for the protection of a shareholder's economic interests, either exclusively or primarily.

If an incorporated association has both the income and liquidation distribution restrictions, a member does not have an economic interest to be defended. It is true that if an association has only the income distribution restriction, a member may have an economic interest. However, the economic interests of members in incorporated associations are characteristically less great than the interests of shareholders in business corporations, and the division between ownership and control is characteristically less, so that the need for

protecting the personal interests of members against the directors is less. We think that on the whole, the need for protection is not substantial enough to outweigh the degree of interference with corporate proceedings which is involved in the oppression remedy, and we do not think that the oppression remedy should be included in the proposed statute.The derivative remedy and the compliance order are, we think, sufficient protection for members ofincoporated associations.

Recommendation 29

(1) We recommend that the proposed statute allow a present or former member of an incorporated association, a present or former officer or director of an incorporated association or an affiliate, or anyone whom the Court of Queen's Bench thinks is proper to make such an application to apply for leave to intervene in or bring an action on behalf of the incorporated association and ancillary orders, but only if the applicant has given the incorporated association and its directors an opportunity to take the action and is acting in good faith, and if, in the Court's opinion, the bringing of the action would be in the interests of the incorporated association.

[Draft Act s. 127]

Section 240 of the Business Corporations Act empowers the Court to order a corporation or any shareholder, director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a business corporation to comply with the BCA, the regulations, the articles of incorporation, the by-laws, or a unanimous shareholder agreement. While the Court might have such powers without express mention in a statute, we think it as well that the proposed statute make similar provision for incorporated associations so that there may be no doubt.

Recommendation 30

We recommend that the proposed statute give the Court power to direct that an incorporated association, or a member, director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of an incorporated association, to comply with the proposed statute or regulations or the articles, or by-laws, or to restrain any such person from contravening the statute, regulations, articles or by-laws.

[Draft Act s. 133]

(3) Right to dissent and be bought out

Under section 184 of the Business Corporations Act, a shareholder who dissents from one of a number of fundamental changes in the corporation's structure or operation -- changes in shareholders' relative rights, for example, or changing the restrictions upon the businesses which the corporation may carry on or selling substantially all its property, or amalgamating with another corporation or transferring the corporation's registration to another jurisdiction -- can object and require the corporation to pay him the fair value of his shares, upon which he ceases to be a shareholder.

This remedy would obviously be inappropriate in the case of an incorporated association which has both the income and liquidation distribution restriction: a member has no interest to be bought out. It could apply to an incorporated association which has only the income distribution restriction, but we think that as a general rule its advantage in protecting minority members would be outweighed by the disadvantage of its intrusiveness into private affairs.

The one kind of case in which we think the right to dissent might be appropriate is the incorporated association which has opted for share capital and has thus treated itself as close to a business corporation, and that is the only kind of case for which we recommend it.

Recommendation 31

We recommend that the proposed statute give a member of an incorporated association the right to dissent from a fundamental change and be bought out at fair value only where the incorporated association has share capital and the member holds a share.

[Draft Act s. 33]

P. Liquidation, dissolution and revival

Part 17 of the Business Corporations Act provides a scheme for the liquidation and dissolution of business corporations. The scheme is flexible. A corporation can liquidate itself. The Court can liquidate a corporation or take over the supervision of a corporate self-liquidation. The procedures and consequences of liquidation are adequately provided for. Provision is made for the striking off of corporations which are not carrying on business or filing returns required by the BCA. We think that the scheme is suitable for the liquidation and dissolution of incorporated associations and that the proposed statute should adopt it.

One specific point should be noted. Section 204 of the Companies Act and section 28 of the Societies Act empower the Lieutenant Governor in Council to revoke the incorporation of a company or of a society. These powers have rarely if ever been

used and they do not perform any useful function. We do not think that the proposed statute should contain such a provision.

Another point should also be noted. Under ACA section 205 and SA section 30, the Registrar of Corporations can strike a company or society from the register if it fails to file a return for two years. Before doing so he must, in the case of a company, demand that the return be filed and, in the case of a society, give notice of his intention to dissolve the society if the notice is not filed, and in both cases he must publish in the Alberta Gazette notice of his intention to strike off. BCA section 205 is somewhat different. On the one hand, it reduces the necessary time of default from two years to one year. On the other, it requires that notice be given not only to the delinquent corporation but also to all its directors.

We think that the scheme of BCA section 205 is suitable for incorporated associations. The time requirements appear sufficient: by the time the procedures have been gone through, an incorporated association will have almost certainly have been in default for two years, and the additional requirement of notice to directors is particularly useful for small societies whose registered office is likely to change from year to year so that notices to the association are likely to go astray. We think that the proposed statute should follow BCA section 205.

BCA Part 17 also provides for the revival of dissolved corporations. Its intention is to restore a revived corporation as far as possible to the legal position which it would have had if it had not been dissolved. Again, we think that the proposed statute should have similar provisions.

Recommendation 32

We recommend that the provision for the liquidation, dissolution and revival of incorporated associations be made along the lines of Part 17 of the Business Corporations Act, with necessary changes.

[Draft Act, Part 8]

Q. Extra-Provincial non-profit corporations

The Business Corporations Act requires an extra-provincial corporation which carries on business in Alberta to register with the Registrar of Corporations. Registration involves providing the Registrar with the corporation's fundamental corporate information, and it also involves the appointment of an attorney in the province forservice of documents upon the corporation. The purpose of registration is to give Albertans a place in the province where they can obtain basic information about a corporation and a place in the province where they can serve it with notices and legal process.

The BCA provisions now apply to extra-provincial non-profit corporations as well as to extra-provincial business corporations. We think that they are in general suitable for non-profit corporations, but that, insofar as non-profit corporations are concerned, they should be included in the proposed statute rather than in the BCA. As the definition of carrying on business, which triggers the duty to register, is not suitable for non-profit corporations, it should be changed.

One special point requires attention. Earlier Companies Acts gave the Attorney General power to exempt an

extra-provincial non-profit corporation from the duty to register in Alberta. The policy of granting such exemptions was abandoned about 1976 and their legislative foundation was abolished when the BCA was enacted. However, a number of exemptions granted before 1976 may remain in force.

It is, we think, generally agreed that the policy of requiring registration of extra-provincial corporations is a good one and that no corporation should be exempted. That raises the question whether the existing exemptions should be terminated.

It can be argued that the extra-provincial corporations have been granted their exemptions and may have relied upon them so that it would be unfair to revoke them. We think otherwise. First, all that is involved is a duty to register, which is not onerous. Second, we do not think it unfair to terminate a special privilege when the termination would merely put the holder of the privilege in the same position as everyone else. Third, we do not think that terminating the exemptions would put any extra-provincial non-profit corporation in a worse position than if the exemption had not been granted in the first place.

We think, however, that fairness requires that the proposed statute give the now-exempted corporations an adequate opportunity to conform to the registration requirement before they are treated as being in default. We think also that the giving of time is not sufficient and that information should be given here as well. We think that the now-exempted corporations should be given one year from the coming into force of the proposed statute to register, and that they should not have to register until 6 months after the Registrar of Corporations gives

them notice that they are required to register.

Recommendation 33

We recommend

(a) that the registration of extra-provincial non-profit corporations be transferred from the Business Corporations Act to the proposed statute;

(b) that extra-provincial non-profit corporations which commence carrying on activities in Alberta after the proposed statute comes into force be required to register under it;

(c) that the proposed statute terminate the exemptions from registration granted to extra-provincial non-profit corporations under earlier Companies Acts and require each now-exempted corporation to register within a year of the coming into force of the statute, or within 6 months of receiving a notice requiring them to register; and

(d) that the registration provisions follow the BCA provisions with necessary changes.

[Draft Act, Part 21]

## CONCLUSION

As we said earlier, this Part II has addressed only the principal policy issues which must be resolved if good non-profit associations legislation is to be enacted. Much of the detail of our proposals can be found only by examining the draft Act contained in Part IV. We believe that the adoption of the policies outlined in this Part II and the enactment of a statute along the lines of the draft Act contained in Part IV would provide an legal foundation and machinery suitable for the incorporation and operation of non-profit associations in

Alberta.

| | |
|---|---|
| J.W. BEAMES | MYRA B. BIELBY |
| C.W. DALTON | R.G. HAMMOND |
| W.H. HURLBURT | H.J.L. IRWIN |
| D.P. JONES | J.C. LEVY |
| D.B. MASON | J.P. MEEKISON |
| BONNIE RAWLINS | A.C.L. SIMS |
| C.G. WATKINS | |

CHAIRMAN

DIRECTOR

March, 1987

## PART III LIST OF RECOMMENDATIONS

Recommendation 1

We recommend that new legislation repeal and replace the Societies Act and the Companies Act, insofar as it relates to non-profit companies.

Recommendation 2

We recommend that the new legislation be contained in one statute.

Recommendation 3

We recommend that the proposed statute generally be along the lines of the draft Incorporated Associations Act which 7s Part III of this report.

Recommendation 4

We recommend that an association which prohibits the distribution of income or property to its members during its existence be permitted to be incorporated under the proposed statute.

Recommendation 5

We recommend that the primary function of the proposed statute be to provide efficient machinery for the incorporation and operation of incorporated associations and for the protection of minorities, but that it provide a few safeguards in the case of associations which receive money from the public or from governments and associations which have both an income and liquidation distribution restriction to their members.

Recommendation 6

We recommend that the proposed statute be made as easy to follow as possible and that administrative steps, particularly the preparation and delivery of explanatory material, be taken to ensure that incorporation and operation under it will be easy and will not usually require professional advice.

Recommendation 7

We recommend that the proposed statute use the basic concepts, terms, form and organization of the Business Corporations Act where, and only where, they are appropriate for incorporated associations.

Recommendation 8

We recommend that the proposed statute provide an incorporation scheme which will allow Alberta non-profit incorporated associations to conform to current federal requirements for tax exempt and charitable status and to any likely federal and provincial requirements.

Recommendation 9

We recommend that the proposed statute

(a) not include any general classification of incorporated associations;

(b) require each association incorporated after the proposed statute comes into force to include in its articles of incorporation either an income distribution restriction (i.e., a provision that no income or property of the association shall be distributed to a member, officer or director of the association except on or after the liquidation of the association) or an income and liquidation distribution restriction (i.e., a provision that no income or property of the association shall be distributed to a member, director or officer either during the

existence of the association or on or after its liquidation).

[Draft Act s. 5]

Recommendation 10

We recommend that the proposed statute

(a) prohibit an incorporated association from declaring dividends and distributing income to its members during its existence;

(b) permit the articles of incorporation of an incorporated association to authorize the incorporated association

(i) to pay a member a reasonable price or remuneration for goods, services or other valuable benefits provided by the member, and

(ii) to give financial assistance to a member as part of the goods, services or other valuable benefits provided by the member, and

(iii) to give financial assistance to a member as part of the incorporated association's activities.

(c) prohibit an incorporated association from giving financial assistance to a member, director or officer except as provided above.

(d) permit the articles of incorporation of an incorporated association which has only an income distribution restriction to authorize it to redeem a membership interest in the incorporated association;

(e) permit the articles of incorporation of an incorporated association which has both an income and liquidation distribution restriction to distribute property to a body corporate with similar purposes even though the body corporate is a member of the incorporated association.

[Draft Act s. 6, 18, 76]

Recommendation 11

We recommend that the proposed statute provide that upon liquidation

(a) the property of an incorporated association which has only an income distribution restriction be distributed according to the articles of incorporation, or, failing a provision dealing with distribution, divided equally among those who are members at the time of dissolution;

(b) the property of an incorporated association which has both an income and liquidation distribution restriction be used for similar purposes (including distribution to a body corporate with similar purposes) designated by the articles of incorporation, or, failing such designation, designated by the Court.

[Draft Act s. 19, 20, 21]

Recommendation 12

We recommend

(a) that the proposed statute not place any restriction upon the purposes for which associations may be incorporated under it, and

(b) that the Registrar be obliged to issue a certificate of incorporation for an incorporated association if the proper documents and fees are delivered to him.

[Draft Act s. 2]

Recommendation 13

We recommend that the proposed statute not prohibit an incorporated association from carrying on business for a profit so long as the association is prohibited from distributing income or property to its members during its existence.

Recommendation 14

We recommend

(a) that the articles of incorporation of an incorporated association be required to state the purposes for which it is incorporated and that an incorporated association be required to act within its stated purposes; and

(b) that an incorporated association be able to impose restrictions upon its activities by provisions in its articles of incorporation.

[Draft Act s. 4]

Recommendation 15

We recommend:

(a) that an incorporated association have the legal capacity of a natural person;

(b) that an incorporated association be prohibited from exercising its powers except for the purposes stated in its articles of incorporation;

(c) that no act of an incorporated association be invalid by reason only that it is contrary to the articles of incorporation or to the proposed statute.

[Draft Act s. 16]

Recommendation 16

(1) We recommend

(a) that the constitution of an incorporated association consist of

(i) articles of incorporation setting out the name, purposes and membership classes of the incorporated association, either an income distribution restriction or an income and liquidation distribution restriction, and such other things as the association

wishes to entrench; and

(ii) by-laws regulating the affairs of the association;

(b) that an incorporated association be free to adopt its own by-laws, but that by-laws be prescribed by ministerial regulation which will apply to anything not covered by by-laws adopted by the incorporated association.

(2) We recommend that an incorporated association be able to change by special resolution any provision of its articles of incorporation or by-laws except as follows:

(a) an incorporated association which has both an income and liquidation restriction on distribution of property to members should not be able to

(i) change its purposes without leave of the Court, or

(ii) relax the restriction at all; and

(b) a change of name should have to conform to the usual rules about names.

(3) We recommend that

(a) a change in an incorporated association's articles of incorporation have no effect until the Registrar of Corporations issues a certificate of amendment; and

(b) a by-law or change in by-law adopted by an incorporated association have no effect until it is sent to the Registrar of Corporations.

[Draft Act s. 3, 4, 38, 39, 40, 78]

Recommendation 17

We recommend that incorporation under the proposed statute be effected by

(a) the sending to the Registrar of Corporations of articles of incorporation, materials concerning the proposed incorporated association's

name, notices of registered office and directors, and the proper fees, and

(b) the issuing by the Registrar of a certificate of incorporation.

[Draft Act s. 3, 8]

Recommendation 18

We recommend that the proposed statute

(a) apply automatically to existing non-profit companies and associations incorporated under the Companies Act and Societies Act respectively, and

(b) recognize the constitutional documents of such companies and societies as the articles of incorporation and by-laws required by the proposed statute.

Recommendation 19

We recommend:

(a) that an association incorporated after the proposed statute comes into force should be required to have the words "Incorporated Association" or the abbreviation "I.A." (which could appear in brackets) at the end of its name;

(b) that the names of those non-profit companies and societies which include "Association", "Foundation", "Society", or Centre, be allowed to remain unchanged;

(c) that after 3 years, the proposed statute should add "(I.A.)" at the end of the name of every existing company or society which has not changed its name to conform to Recommendation 19(a) and which is not referred to in Recommendation 19(b);

(d) that the proposed statute should provide a scheme similar to that of the Business Corporations Act to preclude

the use of identical or confusingly similar names by incorporated associations, and that the statute should provide for regulations on the same lines as those under the BCA; and

(e) that the proposed statute should in addition prohibit the use by an incorporated association of a name identical or similar to the name of an unincorporated association, if the use would be confusing or misleading.

[Draft Act s. 12, 13, 14]

Recommendation 20

We recommend

(a) that the proposed statute

(i) permit an incorporated association to have a capital divided into shares

(ii) apply to an incorporated association which has a capital divided into shares the relevant provisions of the Business Corporations Act about shares and about share certificates, transfers and registers.

(b) that the proposed statute require every incorporated association to have its articles of incorporation establish the classes of memberships and as a minimum provide for one class of members who are entitled to vote at all meetings;

(c) that the proposed statute require every incorporated association to have its by-laws deal with admission to and transfer and termination of memberships; and

(d) that the proposed statute provide that any power of termination of membership (as distinguished from a provision which operates automatically) must be exercised in accordance with natural justice.

[Draft Act s. 29, 30, 33]

Recommendation 21

We recommend:

(a) that an incorporated association be required to have at least one director, and that an incorporated association which has within the preceding 3 years solicited money from the public or received a government grant be required to have at least 3 directors;

(b) that the term of a director of any incorporated association be required to end no later than the third annual meeting following his election;

(c) that the members of an incorporated association be empowered to remove a director at any time by ordinary resolution; and

(d) that, subject to those limits, the election, removal and term of office of directors be left to the by-laws.

[Draft Act s. 41, 43]

Recommendation 22

We recommend

(a) that the proposed statute provide that the directors shall manage the activities and affairs of an incorporated association, but that the provision be subject to the statute and to the articles of incorporation and the by-laws of the association;

(b) that the proposed statute require the directors (a) to act honestly and in good faith with a view to the best interests of the corporation, and (b) to exercise the standard of care, diligence or skill which a reasonable person would exercise in comparable circumstances;

(c) that if it appears that a director or officer has acted honestly and in good faith with a view to the best interests of an incorporated association, or, in the case of a criminal or administrative action or proceeding that is enforced by a

monetary penalty, he had reasonable grounds for believing that his conduct was lawful, a court may relieve the director or officer wholly or partly from liability for a breach of the duties described in Recommendation 22(b);

(d) that the proposed statute provide that upon proper disclosure and abstention from voting by a director or officer of an incoporated association a contract in which the director or officer is interested will be valid and the director or officer will not be liable to account to the incorporated association for profits received under the contract; and

(e) that the proposed statute permit an incorporated association

(i) to indemnify a director against liabilities incurred by him as a director other than liabilities to the association itself, and

(ii) that it permit the association to obtain insurance for a director against liabilities incurred as a director other than for breaches of the director's duty of good faith to the association.

[Draft Act s. 47, 48, 49, 50]

Recommendation 23

We recommend that the proposed statute require every incorporated association to keep financial records and present financial statements for consideration at every annual meeting of the members, the standards to be prescribed by regulation.

Recommendation 24

We recommend that in addition the statute require every incorporated association which in the past 3 years has solicited public funds or received a government grant to

(a) provide its members with comparative financial statements for the preceding financial period,

(b) circulate financial statements to its members 21 days in advance of each annual meeting, or alternatively advertise that the financial statements can be inspected at the registered office, and

(c) file a copy of its financial statements with the Registrar of Corporations.

[Draft Act s. 27, 63]

Recommendation 25

We recommend that

(a) subject to Recommendation 25(b), and subject to exemption by regulation where the amounts involved are small, the proposed statute require every incorporated association to appoint an auditor and that it require the auditor to make the examination that is in his opinion necessary to enable him to report in prescribed form, but that

(b) the proposed statute permit an incorporated association which has not in the past 3 years solicited public money or received a government grant

(i) in lieu of appointing an auditor, to appoint an independent member of the incorporated association or other person to review the financial statements and report to the annual meeting, the resolution to be adopted by a majority of two thirds of the votes cast, or

(ii) by resolution consented to by every member of the incorporated association, to resolve not to appoint an auditor;

(c) that a resolution under Recommendation 25(b) be effective only for one year;

(d) that a member have the right to apply to the Court for the appointment of an auditor apply despite a resolution under Recommendation 25(b)(i) but not if a resolution has been adopted under Recommendation 25(b)(ii).

[Draft Act s. 68, 71]

Recommendation 26

We recommend that the proposed statute provide for the amalgamation of an incorporated association with other Alberta incorporated associations.

[Draft Act s. 84-87]

Recommendation 27

We recommend that the proposed statute provide for the continuance under it of an extra-provincial non-profit corporation and for the continuance of an incorporated association under the non-profit corporations statute of another jurisdiction.

[Draft Act s. 88,89 ]

Recommendation 28

We recommend

(a) that a member of an incorporated association or a person who has been a member in the preceding year be entitled to apply to the Court for an order appointing an inspector to investigate the affairs of the association;

(b) that in the case of an incorporated association which has both an income and liquidation property distribution restriction, the Registrar of Corporations also be entitled to apply for such an order, and that resources be made available to enable the Registrar to perform this function on appropriate occasions.

(c) that the Court have power to make the order if there are sufficient grounds for conducting an investigation to determine whether there has been fraud, dishonesty or oppression;

(d) that the Court have power to give the inspector compulsory powers for the acquisition of information; and

(e) that the inspector's report be admissible in evidence.

[Draft Act s. 93-103]

Recommendation 29

(1) We recommend that the proposed statute allow a present or former member of an incorporated association, a present or former officer or director of an incorporated association or an affiliate, or anyone whom the Court of Queen's Bench thinks is proper to make such an application to apply for leave to intervene in or bring an action on behalf of the incorporated association and ancillary orders, but only if the applicant has given the incorporated association and its directors an opportunity to take the action and is acting in good faith, and if, in the Court's opinion, the bringing of the action would be in the interests of the incorporated association.

[Draft Act s. 127]

Recommendation 30

We recommend that the proposed statute give the Court power to direct that an incorporated association, or a member, director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of an incorporated association, to comply with the proposed statute or regulations or the articles, or by-laws, or to restrain any such person from contravening the statute, regulations, articles or by-laws.

[Draft Act s. 133]

Recommendation 31

We recommend that the proposed statute give a member of an incorporated association the right to dissent from a fundamental change and be bought out at fair value only where the incorporated association has share capital and the member holds a share.

[Draft Act s. 33]

Recommendation 32

We recommend that the provision for the liquidation, dissolution and revival of incorporated associations be made along the lines of Part 17 of the Business Corporations Act, with necessary changes.

[Draft Act, Part 8]

Recommendation 33

We recommend

(a) that the registration of extra-provincial non-profit corporations be transferred from the Business Corporations Act to the proposed statute;

(b) that extra-provincial non-profit corporations which commence carrying on activities in Alberta after the proposed statute comes into force be required to register under it;

(c) that the proposed statute terminate the exemptions from registration granted to extra-provincial non-profit corporations under earlier Companies Acts and require each now-exempted corporation to register within a year of the coming into force of the statute, or within 6 months of receiving a notice requiring them to register; and

(d) that the registration provisions follow the BCA provisions with necessary changes.

[Draft Act, Part 21]

## PART IV DRAFT LEGISLATION

### INCORPORATED ASSOCIATIONS ACT


Interpretation 1

Part 1
Incorporation

Incorporation 2
Incorporating documents 3
Articles of incorporation 4
Requirement re: distribution of property 5
Exceptions 6
By-laws and articles 7
Certificate of incorporation 8
Transitional 9
Existing companies 10
Existing societies 11

Part 2
Names

Name Requirements 12
Notice to change name 13
Revocation of name 14

Part 3
Effect of Incorporation

Effect of incorporation 15
Capacity of incorporated association 16
Members not liable 17

Part 4
Distribution of Property and Income

Use of property 18
Distribution on liquidation 19,20
Court may give directions 21
Recovery of property 22

Part 5
Dealings with Incorporated Associations

No constructive notice 23

Authority of directors, officers and agents 24
Seal 25

Part 6
Registered Office, Records and Returns

Registered office, etc. 26
Record keeping 27
Annual return 28

Part 7
Membership

Articles and membership 29
By-laws and membership 30
Consent 31
Resignation of membership 32
Application of Business Corporations Act 33
Evidence of membership 34
Transfer of membership 35
Register of members 36

Part 8
By-laws

Purpose of by-laws 37
Standard by-laws 38
Initial by-laws 39
Special resolution 40

Part 9
Appointment and Election of Directors

Number and qualifications of directors 41
First directors 42
Election of directors 43
Irregularities 44
Notice of change of directors 45
Proceedings of directors 46

Part 10
Powers, Duties and Obligations of Directors

Directors' duties 47
Disclosure by directors and officers in relation to contracts 48
Duty of care 49
Indemnification 50

Part 11

Proceedings of Members


By-laws 51
Place of meetings 52
Directors to call meetings 53
Notice of meetings 54
Proposals 55
Quorum 56
Voting 57
Ballot vote 58
Resolution instead of meeting 58
Meeting on requisition of members 60
Meeting called by Court 61


Part 12
Disputed Elections


Disputed election or appointment 62


Part 13
Financial Affairs


Annual financial statements 63
Copies to members 64
Copies to Registrar 65
Qualifications of auditor 66
Appointment of auditor 67
When auditor required 68
Term of office and removal 69
Filling vacancies 70
Court may appoint auditor 71
Rights and duties of auditor 72
Auditor's duty to examine 73
Auditor's right to information 74
Qualified privilege 75
Prohibited financial assistance 76


Part 14
Debt Securities


Application of Business Corporations Act 77


Part 15
Fundamental Changes


Amendment of articles 78
Class votes 79
Articles of amendment 80
Effect of amendment 81
Restatement of articles 82
Amalgamation 83
Amalgamation agreement 84
Adoption of agreement 85

Articles of amalgamation 86
Effect of amalgamation 87
Continuance into Alberta 88
Continuance out of Alberta 89
Extra ordinary sale, lease or exchange 90

Part 16
Branches and Local Corporations

Branches 91
Co-operative arrangements 92

Part 17
Investigation

Court may order investigation 93
Scope of order 94
Costs of application 95
Directions 96
Co-operation with other officials 97
Hearings 98
Witnesses 99
Statements privileged 100
Solicitor-client privilege 101
Copy of report 102
Report as evidence 103

Part 18
Liquidation and Dissolution

Staying proceedings 104
Dissolution by directors or members 105
Proposal for dissolution 106
Dissolution by Registrar 107
Dissolution by Court order 108
Dissolution by Court order - other grounds 109
Court order 110
Registrar's duty 111
Powers of Court 112
Effect of Court order 113
Vacancy in office of liquidator 114
Duties of liquidator 115
Powers of liquidator 116
Final accounts and discharge of liquidator 117
Member's right to distribution in money 118
Custody of documents, etc. 119
Existing rights unaffected by dissolution 120
Unknown claimants 121

Part 19
Revival

Revival of incorporated association 122
Revival of other bodies corporate 123

Part 20
Remedies, Offences and Penalties

Definitions 124
Derivative action 125
Powers of Court 126
Court approval of stay, etc. 127
Costs 128
Rectification of records 129
Court order for directions 130
Registrar's refusal to file 131
Appeal from Registrar's decision 132
Compliance or restraining order 133
Offence re: returns, etc. 134
General penalty 135
Order for compliance 136
Appeal from conviction 137
Limitation period 138
Civil remedy unaffected 139

Part 21
General

Service on members, directors 140
Service on incorporated association 141
Service on Registrar 142
Waiver of notice 143
Registrar's certificate 144
Certificate by incorporated association 145
Copies of documents 146
Proof required by Registrar 147
Registrar's power to issue certificates 148
Certificate of status 149
Registrar may alter documents 150
Errors in certificates 151
Examination of documents 152
Registrar's records 153
Regulations 154

Part 22
Extra-provincial Non-profit Corporations

Interpretation 155
Exemption from fees 156

Division 1
Registration


| | |
|---|---|
| Duty to register | |
| Application for registration | 157 |
| Name requirements | 158 |
| Use of assumed name | 159 |
| Registration | 160 |
| Cancellation of registration | 161 |
| Reinstatement of registration | 162 |
| | 163 |


Division 2
Information


| | |
|---|---|
| Use of name | |
| Rules re: attorney for service | 164 |
| Notice of changes | 165 |
| Notice of amalgamation | 166 |
| Notices re: liquidation | 167 |
| Annual return | 168 |
| | 169 |


Division 3
General


| | |
|---|---|
| Registrar's certificate | |
| Validity of acts | 170 |
| Effect of non-registration | 171 |
| Offence | 172 |
| | 173 |


Part 23
Consequential and Commencement


| | |
|---|---|
| Amends RSA 1980 cC-20 | |
| Amends SA 1981 cB-15 | 174 |
| Repeals RSA 1980 cS-18 | 175 |
| Coming into force | 176 |
| | 177 |

# DRAFT
# INCORPORATED ASSOCIATIONS ACT

## General Notes

1. This draft Act reflects the recommendations about policy contained in Part II of this report.

2. References to recommendations appear after some of the sections in the draft Act. These are the recommendations which are made in Part II and listed in Part III.

## Interpretation

1(1) In this Act,

(a) "affairs" means the relationships among a corporation and its members but does not include the activities carried on by the corporation;

(b) "articles" means original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of dissolution and articles of revival, all as amended from time to time;

(c) "associate", when used to indicate a relationship with a person, means

(i) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than 10% of the voting rights under all circumstances or under any circumstances that have occurred and are continuing, or a currently exercisable option or right to purchase those shares or those convertible securities,

(ii) a partner of that person acting on behalf of the partnership of which they are partners,

(iii) a trust or estate in which that person has a substantial interest or in respect of which he serves as a trustee or in a similar capacity,

(iv) a spouse of that person, or

(v) a relative of that person or of his spouse if that relative has the same residence as that person;

(d) "Court" means the Court of Queen's Bench;

(e) "debt security" means a debt obligation of an incorporated association and includes a certificate evidencing such a debt obligation;

(f) "director" means a person occupying the position of director by whatever name called and "directors" and "board of directors" include a single director;

(g) "existing body corporate" means an existing company and an existing society;

(h) "existing company" means a company registered under the Companies Act at the date this Act comes into force

(i) that by reason of a direction or authorization of the Registrar of Companies under Part 9 of that Act does not have the word "limited" as part of its name, or

(ii) that by its memorandum of association or articles of association prohibits the payment to its members of any dividend,

but does not include a municipal housing company limited by shares incorporated under the Companies Act and having as its object the development, provision and operation, or any of them, of housing and accommodation;

(i) "existing society" means a society registered under the Societies Act at the date this Act comes into force;

(j) "extra-provincial corporation" means a body corporate

(i) "incorporated otherwise than by or under an Act of the Legislature or an Ordinance of the Northwest Territories, or

(ii) incorporated by or under an Ordinance of the Northwest Territories and not subject to the legislative authority of the Province by section 16 of the Alberta Act (Canada);

(k) "extra-provincial non-profit corporation" means a body corporate that is, by virtue of its corporate constitutional documents, subject to a prohibition that is substantially the same as the prohibition imposed by a provision referred to in section 5(a) or section 5(b)and is incorporated

(i) otherwise than by or under an Act of the Legislature or an Ordinance of the Northwest

Territories, or

(ii) by or under an Ordinance of the Northwest Territories and not subject to the legislative authority of the Province by section 16 of the Alberta Act (Canada);

(l) "incorporated association" means

(i) a body corporate incorporated under this Act or revived as an incorporated association under this Act,

(ii) an existing body corporate that is registered and deemed to have been incorporated under this Act by virtue of section 9(1); and

(iii) an extra provincial non-profit corporation which has continued under this Act

which has not been discontinued under this Act

(m) "incorporator" means a person who signs articles of incorporation;

(n) "individual" means a natural person;

(o) "member" includes shareholder in the case of a body corporate with a capital stock divided into shares;

(p) "Minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

(q) "ordinary resolution" means a resolution

(i) passed by a majority of the votes cast by the members who voted in respect of that resolution, or

(ii) signed by all the members entitled to vote on that resolution;

(r) "person" includes an individual, partnership, association, body corporate, trustee, executor, administrator and legal representative;

(s) "prescribed" means prescribed by the regulations;

(t) "Registrar" means the Registrar of Corporations or a Deputy Registrar of Corporations;

(u) "send" includes deliver;

(v) "special resolution" means a resolution

(i) passed by at least 2/3 of the votes cast by members who voted in respect of that resolution, or

(ii) signed by all the members entitled to vote on that resolution.

(2) A reference in this Act to the Companies Act or the Societies Act is deemed to include a reference to predecessors of those Acts.

(3) For the purposes of this Act, a soliciting incorporated association is an incorporated association which within the current financial period or within the preceding 3 financial periods has

(a) solicited money from the public, or

(b) received a grant or similar financial assistance from a Canadian municipal, provincial or federal government or from an agency of a Canadian municipal, provincial or federal government.

(4) The Lieutenant Governor in Council may make regulations defining the words "solicited money from the public".

(5) For the purposes of this Act,

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person, and

(b) if 2 bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other.

(6) For the purposes of this Act, a body corporate is controlled by a person if

(a) memberships in the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of that person, and

(b) the votes attached to those memberships are sufficient, if exercised, to elect a majority of the directors of the body corporate.

(7) For the purposes of this Act, a body corporate is the holding body corporate of another if that other body corporate is its subsidiary.

(8) For the purposes of this Act, a body corporate is a subsidiary of another body corporate if

(a) it is controlled by

(i) that other,

(ii) that other and 1 or more bodies corporate, each of which is controlled by that other, or

(iii) 2 or more bodies corporate, each of which is controlled by that other,

or

(b) it is a subsidiary of a body corporate that is that other's subsidiary.

# PART 1

## INCORPORATION

Notes to Part 1.

1. Part 1 provides both for the incorporation of new non-profit corporate bodies and for bringing existing non-profit companies and societies under the proposed Act. Both new and existing corporate bodies are called "incorporated associations".

2. Ss. 2, 3 and 8 would permit anyone to incorporate an incorporated association by filing with the Registrar of Corporations the material listed in s. 3, i.e., a simple form of articles of incorporation, two formal notices, and the proper fees. (The association's name would have to comply with Part 2.)

3. Ss. 2, 3 and 8 would allow an incorporated association to be incorporated for any purpose. The purposes would have to be stated (s. 4(b)), but that is for the protection of the association and its members, and the Registrar would not be able to refuse incorporation because of the purposes stated. (S. 16(3)(a) would prohibit an incorporated association from carrying on activities except for its stated purposes.)

4. The proposed statute is for non-profit organizations, not for organizations seeking direct pecuniary gain for their members. The draft Act would therefore require an incorporated association, as a minimum, to prohibit the distribution of income or property of the association to members of the association except upon liquidation of the association. (This prohibition will be referred to in these notes as an "income distribution restriction".) An association which is incorporated primarily for the benefit of its members (for example, a sport or social club or professional or trade association) would probably choose that minimum restriction on distribution, which is provided for in s. 5(a), unless it wants tax exemption under the Income Tax Act.

5. The draft Act would go on to allow an incorporated association to choose a more stringent restriction under which no income or property of the association could be distributed to its members even upon the liquidation of the association. (This will be referred to as an "income and liquidation distribution restriction".) A charity or other association incorporated primarily for the benefit of others, particularly one which wants to be exempt from income tax or to be regarded as a charity for income tax purposes, would probably choose the greater

restriction, which is provided for in s. 5(b). The choice between the two restrictions would be made by the association. An association which did not want either restriction could incorporate under the Business Corporations Act.

6. (Note that both kinds of restrictions upon the distribution of an incorporated association's property are supported by s. 16(3)(c), which prohibits an incorporated association from exercising any of its powers in a manner contrary to its articles and by provisions of Part 4 which deals with the distribution of the association's property.)

7. An incorporated association could make some exceptions to whichever restriction on the distribution of income or property it adopts. S. 6(1)(a) and 6(2)(a) would allow it to provide for payment for benefits received. S. 6(2)(b) would allow an association with only an income distribution restriction to provide for paying out a member who surrenders his membership. S. 6(3)(b) would allow an association with both an income and liquidation restriction to distribute property to a member which is a body corporate with similar purposes and restrictions.

8. Ss. 9-11 would apply the Draft Act to all non-profit companies incorporated under the Companies Act and all societies incorporated under the Societies Act and would treat their existing constitutional documents as their articles of incorporation and by-laws. The constitutional documents of a company are the memorandum and articles of association and the constitutional documents of a society are its application for incorporation and its by-laws.

Incorporation

2 One or more persons may incorporate an incorporated association.

[Recommendation 12(a)]

Incorporating documents

3(1) The incorporators shall send to the Registrar

(a) the articles of incorporation in the prescribed form signed by the incorporators,

(b) the documents relating to the name of the incorporated association that are prescribed by the regulations,

(c) a notice of registered office and a notice of

designated post office box and separate records office, if any,

(d) a notice of directors in the prescribed form, and

(e) the prescribed fees.

(2) The incorporators may send signed by-laws to the Registrar with the articles of incorporation.

[Recommendations 16(1), 17]

**Articles of incorporation**

**4** Articles of incorporation shall set out at least the following in respect of the proposed incorporated association:

(a) the name of the incorporated association;

(b) the purpose or purposes for which the incorporated association is being incorporated;

[Recommendation 14]

(c) any restrictions on the activities that the incorporated association may carry on;

[Recommendation 14]

(d) either

(i) a statement that the incorporated association will have 1 class of members, or

(ii) if there is more than 1 class of membership,

(A) the designation and characteristics of each class,

(B) the special rights, privileges, restrictions and conditions attaching to membership in each class,

(C) the maximum number, if any, of members who may be admitted to membership in each class, and

(D) the maximum number, if any, of memberships that may be issued in each class.

[Recommendations 15, 16]

**Requirement re: distribution of property**

5 Subject to section 6, the articles shall contain one of the following provisions:

(a) a provision that no income or property of the incorporated association shall be distributed to a member, director or officer except on or after the liquidation of the incorporated association;

(b) a provision that no income or property of the incorporated association shall be distributed to a member, director or officer either during the existence of the incorporated association or on or after its liquidation.

[Recommendation 9(b)]

**Exceptions**

6(1) Notwithstanding section 5, articles that contain a provision under section 5(a) may contain either or both of the following provisions:

(a) a provision permitting the incorporated association to pay a member a reasonable price or remuneration for goods, services or other valuable benefits provided by the member to the incorporated association;

[Recommendation 10(c)(i)]

(b) a provision permitting the incorporated association to pay to a member on the surrender of his membership an amount that does not exceed the fair value of his membership.

(c) a provision permitting the incorporated association to give a member financial assistance described in section 76(2).

[Recommendation 10(c)]

(2) Notwithstanding section 5, articles that contain a provision under section 5(b) may contain any or all of the following provisions:

(a) a provision permitting the incorporated association to pay a member a reasonable price or remuneration for goods, services or other valuable benefits provided by the member to the incorporated association;

[Recommendation 10(c)(i)]

(b) a provision permitting the incorporated association to distribute income or property to a member of the incorporated association that is itself a body corporate the purposes of which are similar to the purposes of the incorporated association and is, except for a provision of a kind permitted by this subsection, subject to a prohibition that is substantially the same as the one set out in section 5(b);

(c) a provision stating that on liquidation the property of the incorporated association shall be distributed for a purpose stated in the articles which is similar to a purpose of the incorporated association which is stated in the articles.

(d) a provision permitting the incorporated association to give a member financial assistance described in section 76(2).

[Recommendation 10(c)]

(3) No incorporated association may make a payment under subsection (1)(b) or subsection 2(b) if there are reasonable grounds for believing that the incorporated association is, or would after the payment be, unable to pay its liabilities as they become due.

**By-laws and articles**

7 Articles of incorporation may contain any provision permitted or required by this Act or by law to be contained in the by-laws.

[Recommendation 12(b)]

**Certificate of incorporation**

8 On receipt of the documents and fees required under section 3, the Registrar shall issue a certificate of incorporation.

[Recommendation 17]

**Transitional**

9(1) On the coming into force of this Act every existing company and every existing society is an incorporated association that is

(a) registered, and

(b) deemed to have been incorporated

under this Act.

(2) The register maintained under the Companies Act in respect of existing companies and the register maintained by the Registrar of Corporations in respect of existing societies are hereby continued as a register to be known as the register of incorporated associations.

[Recommendation 18]

**Existing companies**

**10**(1) Subject to this section, on an existing company becoming registered as an incorporated association under this Act by virtue of section 9(1)

(a) the memorandum of association of the existing company as amended is the articles of the incorporated association, and

(b) the articles of association of the existing company as amended are the by-laws of the incorporated association.

(2) The articles of an incorporated association referred to in subsection (1) shall be deemed to set out

(a) that the name of the existing company is the name of the incorporated association,

(b) that the objects of the existing company as stated in its memorandum of association as amended are the purposes of the incorporated association,

(c) that a restriction on the objects or powers of the existing company set out in the memorandum or articles of association as amended is a restriction on the activities that the incorporated association may carry on, and

(d) that the memberships of the incorporated association and the rights, privileges, restrictions and conditions attached to each class of membership are those set out in the memorandum and articles of association of the existing company as amended.

(3) Where the articles of an incorporated association referred to in subsection (1) do not contain a provision that is substantially the same as one of the provisions required by section 5, the articles are deemed to contain the provision referred to in section 5(a).

(4) Notwithstanding subsection (1), a provision in

the memorandum or articles of association of an existing company that contravenes a requirement of this Act or the regulations is invalid to the extent that it contravenes this Act or the regulations.

[Recommendation 18]

**Existing societies**

11(1) Subject to this section, on an existing society becoming registered as an incorporated association under this Act by virtue of section 9(1),

(a) the application for incorporation of the existing society as amended is the articles of the incorporated association, and

(b) the by-laws of the existing society as amended are the by-laws of the incorporated association.

(2) The articles of an incorporated association referred to in subsection (1) shall be deemed to set out

(a) that the name of the existing society is the name of the incorporated association,

(b) that the purpose or purposes for which incorporation of the existing society was desired as set out in the application for incorporation as amended are the purpose or purposes of the incorporated association,

(c) that a restriction on the activities of the existing society as set out in the application for incorporation as amended is a restriction on the activities that the incorporated association may carry on, and

(d) that a statement in the application for incorporation of the existing society as amended designating different classes of memberships or setting out the characteristics or special rights, privileges, restrictions or conditions attaching to different classes of memberships is a statement about different classes of memberships of the incorporated association.

(3) Where the articles of an incorporated association referred to in subsection (1) do not contain a provision that is substantially the same as one of the provisions required by section 5, the articles are deemed to contain the provision referred to in section 5(a).

(4) Notwithstanding subsection (1), a provision in

the application for incorporation or by-laws of an existing society that contravenes a requirement of this Act or the regulations is invalid to the extent that it contravenes this Act or the regulations.

[Recommendation 18]

## PART 2

## NAMES

Notes to Part 2.

1. A new incorporated association would have to end its name with the words "Incorporated Association" or the abbreviation "I.A.", and it could not include any of the distinctive words which a business corporation must have (s. 12(1), (4)). An existing corporation would have three years to change its name, failing which the statute would add "(I.A.)" at the end of its name. This requirement is intended to alert outsiders to the fact that they are dealing with an incorporated body, while distinguishing it from a business corporation. It is more stringent than the requirements of either the Companies Act or the Societies Act. Existing non-profit companies and societies would not have to conform to the requirement if their names include a number of words which, though they do not signify incorporation, are consistent with it.

2. The other provisions of Part 2 are much the same as their counterparts in the Business Corporations Act. They are intended to avoid misleading similarities in corporate names, and s. 12(a)(d) would go farther than the BCA and prohibit the misleading or confusing use by an incorporated association of the name of an unincorporated association. They would also carry over other provisions regulating the use of names, and s. 12(7) would allow the use of a number for a name.

3. The current procedure under which corporate name searches must be given to the Registrar would continue to apply. In effect, as under the Business Corporations Act, the Registrar would have the power to refuse to allow the incorporation of an association under a name which appears to him to contravene the proposed Act or regulations, and the incorporators would be able to appeal the refusal to the Court of Queen's Bench under s. 132(1).

Name requirements

12(1) The name of an incorporated association that

(a) is incorporated, or

(b) changes its name

after the coming into force of this Act shall end with the words "Incorporated Association" or the abbreviation "I.A.", which may be placed in brackets.

(2) At any time within three years after the coming into force of this Act, an existing body corporate may by ordinary resolution add at the end of its name the words "Incorporated Association" or the abbreviation "I.A.", which may be placed in brackets.

(3) Upon the third anniversary of the coming into force of this Act, the name of an existing body corporate is changed by adding "(I.A.)" at the end thereof unless either

(a) the incorporated association has changed its name so that the name conforms to subsection (1), or

(b) the name of the incorporated association contains one of the following words: association, foundation, society or centre.

(4) The name of an incorporated association shall not include any of the words "Limited", "Corporation" or "Incorporated" or an abbreviation of any of them.

(5) An incorporated association may file a notice in the prescribed form with the Registrar designating an additional form or forms of its name in accordance with subsection (6).

(6) Subject to subsection (9), the name of the incorporated association or an additional form of its name in a notice filed under subsection (5) may be in an English form or a French form or in a combined English and French form, and the incorporated association may use and may be legally designated by any of those forms.

(7) Subject to subsection (9), an incorporated association may, outside Canada, use and be legally designated by a name in any language form.

(8) If requested to do so by the incorporators of an incorporated association, or by an incorporated association, the Registrar shall assign to the incorporated association as its name a designated number determined by him.

(9) Subject to the circumstances and conditions prescribed by the regulations, an incorporated association shall not have a name

(a) that is prohibited by the regulations or contains a word or expression that is prohibited by the regulations,

(b) that is identical to the name of

(i) a body corporate incorporated under the

laws of Alberta, whether in existence or not,

(ii) an extra-provincial corporation registered in Alberta, or

(iii) a corporation incorporated by or under an Act of the Parliament of Canada,

(c) that is similar to the name of

(i) a body corporate incorporated under the laws of Alberta,

(ii) an extra-provincial corporation registered in Alberta, or

(iii) a corporation incorporated by or under an Act of the Parliament of Canada

if the use of that name is confusing or misleading,

(d) that is identical or similar to the name of an unincorporated association if the use of that name is confusing or misleading, or

(e) that does not meet the requirements prescribed by the regulations.

(10) Where a body corporate incorporated under the laws of Alberta gives an undertaking to dissolve or change its name and the undertaking is not carried out within the time specified, the Registrar may, by notice in writing giving his reasons, direct the body corporate to change its name to one that he approves within 60 days of the date of the notice.

[Recommendation 19]

**Notice to change name**

13(1) If, through inadvertence or otherwise, an incorporated association comes into existence with or acquires a name that contravenes section 12, the Registrar may, by notice in writing giving his reasons, direct the incorporated association to change its name to one that he approves within 60 days of the date of the notice.

(2) The Registrar may give a notice under subsection (1) on his own initiative or at the request of a person who feels aggrieved by the name that contravenes section 12.

[Recommendation 19]

**Revocation of name**

14 If an incorporated association

(a) is directed to change its name under section 12(10) or 13(1), and

(b) does not appeal the direction of the Registrar within 60 days of the date of the notice,

the Registrar may revoke the name of the incorporated association and assign to it a number designated or a name approved by the Registrar and, until changed in accordance with Part 15, the name of the incorporated association is the number or name so assigned.

[Recommendation 19]

## PART 3

## EFFECT OF INCORPORATION

Notes to Part 3.

1. Once the Registrar has issued a certificate of incorporation under the proposed Act, it would be incontestable that there is an incorporated association and that it was incorporated on the date mentioned in the certificate (s. 15). The certificate of incorporation of an existing company or society would continue in existence without special reference in the draft Act.

2. So far as the law is concerned, an incorporated association could do anything that an individual could do (s. 16(1)). Although an incorporated association would be forbidden to act except for its stated purposes (s. 16(3)), a forbidden act would be valid (s. 16(4)). This provision would be supported by s. 23, which provides that no one is affected with notice of a document by reason only that the document is filed with the Registrar or with the association. These provisions would do away with the doctrine of ultra vires, but the Court could under s. 133 make an order restraining an incorporated association from acting outside its purposes.

3. S. 17 would protect the members of an incorporated association from liability for the obligations of the association, that is, it would confer limited liability.

Effect of incorporation

15(1) An incorporated association comes into existence on the date shown in the certificate of incorporation.

(2) A certificate of incorporation is conclusive proof for the purposes of this Act and for all other purposes

(a) that the provisions of this Act in respect of incorporation and all requirements precedent and incidental to incorporation have been complied with, and

(b) that the incorporated association has been incorporated under this Act as of the date shown in the certificate of incorporation.

Capacity of incorporated association

16(1) Notwithstanding section 4(b) and (c) and

subsection (3), an incorporated association has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

[Recommendation 15(a)]

(2) An incorporated association has the capacity to carry on its activities, conduct its affairs and exercise its powers in any jurisdiction outside Alberta to the extent that the laws of that jurisdiction permit.

[Recommendation 15(a)]

(3) An incorporated association shall not

(a) carry on its activities or exercise its powers except for the purposes stated in its articles,

(b) carry on activities or exercise powers that it is restricted by this Act or by its articles from carrying on or exercising, or

(c) exercise any of its powers in a manner contrary to its articles.

[Recommendation 15(b)]

(4) No act of an incorporated association, including any transfer of property to or by an incorporated association, is invalid by reason only that the act or transfer is contrary to its articles or this Act.

[Recommendation 15(c)]

**Members not liable**

17 The members of an incorporated association are not, as members, liable for any liability, act or default of the incorporated association except under section 120(4).

## PART 4

## DISTRIBUTION OF PROPERTY AND INCOME

Notes to Part 4.

1. This Part complements the restriction on distribution of property to members which s. 5 would impose.

2. An incorporated association with only an income distribution restriction under s. 5(a) could in its articles of incorporation make whatever provision it wanted for the distribution of its property upon its liquidation (s. 19). Failing such provision, the property would be distributed among its members.

3. An association with both an income and liquidiation distribution restriction under s. 5(b)) could in its articles do one of two things. First, it could provide that its property would on its liquidation go to a member of the association which is itself a non-profit corporation with similar purposes and a similar income and liquidation distribution restriction (s. 19). Alternatively, it could provide that its property would be applied for a purpose which is similar to one of its own purposes as stated in its articles (s. 20). If it did neither, the Court could direct that the property go for such a similar purpose (s. 21).

Use of property

18(1) Except as provided in this Act, the property and profits of an incorporated association shall be used to further the activities of the incorporated association.

(2) An incorporated association shall not

(a) declare a dividend or distribute any of its income to its members during its existence, or

(b) distribute any of its income or property to its members contrary to its articles.

[Recommendation 10]

Distribution on liquidation

19 On the liquidation of an incorporated association the articles of which contain a provision referred to in section 5(a), the property of the incorporated association shall be distributed

(a) in accordance with its articles, or

(b) if the articles make no provision, to the members of the association in equal shares.

[Recommendation 11(a)]

**Distribution on liquidation**

20 On the liquidation of an incorporated association the articles of which contain a provision referred to in section 5(b), the property of the incorporated association shall be distributed in accordance with a provision in the articles that is permitted under section 6(2)(b) or (c).

[Recommendation 11(b)]

**Court may give directions**

21 The Court may give directions that any property of the incorporated association that is not distributed under section 20 shall be distributed for a purpose which, in the opinion of the Court, is similar to a purpose of the incorporated association stated in its articles.

[Recommendation 11(b)]

**Recovery of property**

22 An incorporated association

(a) has a right to recover from a member, director or officer any money or property, or the value of it, that is paid or transferred to the member, director or officer in contravention of this Part, and

(b) may enforce the right by any remedy under law or equity against the member, officer or director, or against the money or property.

## PART 5

## DEALINGS WITH INCORPORATED ASSOCIATIONS

Notes to Part 5.

1. Part 5 would do away with the undesirable parts of the doctrine of constructive notice. An outsider would be entitled to deal with an incorporated association through those who might be expected to have authority to act for the association even if it should later appear that they did not have the actual authority which they appeared to have. Only an insider who ought to have known, or an insider or outsider who did know, of the lack of authority would be affected by it.

No constructive notice

23 No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning an incorporated association by reason only that the document has been filed by the Registrar or is available for inspection at an office of the incorporated association.

Authority of directors, officers and agents

24 An incorporated association, a guarantor of an obligation of the incorporated association or a person claiming through the incorporated association may not assert against a person dealing with the incorporated association or dealing with any person who has acquired rights from the incorporated association

(a) that the articles or by-laws have not been complied with,

(b) that the persons named in the most recent notice of directors filed by the Registrar under this Act are not the directors of the corporation,

(c) that the place named as the registered office in the most recent notice of registered office filed by the Registrar under this Act is not the registered office of the incorporated association,

(d) that the post office box designated as the address for service by mail in the most recent notice of designated post office box filed by the Registrar under this Act is not the address for service by mail of the corporation,

(e) that a person held out by the incorporated association as a director, an officer or an agent of the incorporated association

(i) has not been duly appointed, or

(ii) has no authority to exercise a power or perform a duty that the director, officer or agent might reasonably be expected to exercise or perform,

(f) that a document issued by any director, officer or agent of the incorporated association with actual or usual authority to issue the document is not valid or not genuine, or

(g) that financial assistance referred to in section 76 or a sale, lease or exchange of property referred to in section 90 was not authorized,

unless the person has, or by virtue of his position with or relationship to the incorporated association ought to have, knowledge of those facts at the relevant time.

**Corporate Seal**

25(1) An incorporated association may adopt and change a corporate seal that shall contain the name of the incorporated association.

(2) A document executed on behalf of an incorporated association by a director, an officer or an agent of the incorporated association, is not invalid only because the corporate seal is not affixed to the document.

(3) Share certificates of an incorporated association may be issued under its corporate seal or a facsimile of that corporate seal.

(4) A document requiring authentication by an incorporated association may be signed by a director or the secretary or other authorized officer of the incorporated association and need not be under its corporate seal.

(5) An incorporated association may adopt a facsimile of its corporate seal for use in any other jurisdiction outside Alberta that complies with the laws of that jurisdiction.

## PART 6

## REGISTERED OFFICE, RECORDS AND RETURNS

Notes to Part 6.

1. S. 26 would require an incorporated association to have an office at which documents could be served, an office or post office box to which documents could be sent by mail for service, and a records office, where fundamental records must be kept and made available for inspection by members and directors. These could all be the "registered office". Alternatively, a post-office box could be given as the address for service by mail, or the records could be kept at another designated records office. The Registrar would have to be kept notified of these addresses.

2. S. 27 would be for the benefit of directors and officers. It would require the corporation to maintain basic records for their inspection.

3. S. 28 would be for the benefit of the public. It would require each incorporated association to disclose annually who its directors and officers are and the location of its registered office (and post-office box for service and records office, if these are separate). It would also require each association to give information about foreign land ownership (if any); and it would require each association to say whether it had received money from the public or by way of government grant within the preceding 3 years (which is intended to support the requirement in s. 65 that associations which have received such money must file annual financial statements with the Registrar).

Registered office, etc.

26(1) An incorporated association

(a) shall have a registered office in Alberta which is readily identifiable from the address or other description given in the last notice of registered office filed with the Registrar, and

(b) may designate

(i) a post office box for service by mail, and

(ii) a separate records office.

(2) The registered office

(a) is the incorporated association's address for

service by mail if there is no designated post office box, and

(b) is the incorporated association's records office if there is no designated records office.

(3) A post office box may not be designated as the incorporated association's records office or registered office.

(4) The directors may change the incorporated association's registered office and make or change a designation of post office box or separate records office.

(5) If the incorporated association's registered office, post office box or separate records office is changed, the incorporated association shall, within 15 days, send a notice of the change in the prescribed form to the Registrar.

**Record keeping**

27(1) An incorporated association shall prepare and maintain at its records office records containing

(a) the articles and by-laws and amendments to them,

(b) minutes of meetings and resolutions of members,

(c) all notices of directors and changes of directors required by this Act to be filed with the Registrar,

(d) a register of members as required by section 36 or by section 46 of the Business Corporations Act, and

(e) the incorporated association's most recent financial statements.

(2) In addition to the records described in subsection (1), an incorporated association shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committee of the directors.

[Recommendation 23]

(3) A director or member of the incorporated association may examine the records described in subsection (1) free of charge.

(4) An incorporated association shall furnish to a member, at his request and on payment of a reasonable

fee prescribed by the incorporated association, a copy of its articles of incorporation and by-laws.

**Annual return**

28 An incorporated association shall in each year, on or before the prescribed date, make a return to the Registrar containing

(a) the full name and address of each officer and director of the incorporated association, and all offices held by each,

(b) the addresses of the incorporated association's registered office, post office address and records office,

(c) any information respecting the members of the incorporated association that may be required by regulations under the Agricultural and Recreational Land Ownership Act and section 33 of the Citizenship Act (Canada) in the form and manner prescribed by those regulations, and

(d) information as to whether the incorporated association has

(i) solicited or received any money from the public, or

(ii) received a grant or other similar financial assistance from a Canadian municipal, provincial or federal government or from an agency of a Canadian municipal, provincial or federal government

within the 3 years preceding the date of the return.

## PART 7

## MEMBERSHIP

**Notes to Part 7.**

1. Ss. 29, 30 and 31, by requiring articles and by-laws about the admission of members and the termination of membership, would require each incorporated association to turn its mind to those subjects. On the other hand, they would leave each association to make its own rules about membership. The only restriction is that an association would have to observe the rules of natural justice in terminating a membership for any reason other than the non-payment of fees and levies or the lapse of time. S. 36 would treat non-transferable memberships as the norm, but would allow an association, through its articles of incorporation, to make its memberships transferable.

2. The draft Act is not primarily designed with shares and share capital in mind. S. 33 would, however, permit an incorporated association to have share capital, in which event a number of provisions of the Business Corporations Act would apply to the association.

3. S. 35 would require an incorporated association to have a register of members (which, under s. 27, it would have to keep at its registered office or separate records office).

**Articles and membership**

29 The articles

(a) shall provide for membership in the incorporated association,

(b) shall provide for at least 1 class of membership that entitles the members of the class to vote at all meetings of members, and

(c) may provide for more than 1 class of membership, and in that case shall state the rights, privileges, restrictions and conditions attaching to each class of membership.

[Recommendation 20(b)]

**By-laws and membership**

30(1) The by-laws

(a) shall

(i) provide for the method of admission to membership,

(ii) provide that a member may not transfer his membership or provide for the method or methods by which a membership may be transferred and any restrictions on transfer, and

(iii) provide for the termination of memberships,

and

(b) may provide for the term of a membership and any circumstances on which a membership will terminate.

(2) The by-laws may

(a) confer on the directors or members, or any committee of directors or members, power to terminate a membership for reasons prescribed by the by-laws, and

(b) prescribe the circumstances under which a membership terminates or may be terminated.

(3) Except in the case of termination for non-payment of fees, dues, or other similar levies and termination due to lapsing of time, a director, member or committee acting under subsection (2)(a) must observe the rules of natural justice.

[Recommendation 20(c), (d)]

**Consent**

**31**(1) The by-laws may provide that a member of a group or class of persons is, or is entitled to become, a member of the incorporated association.

(2) A member of the group or class referred to in subsection (1) who satisfies the requirements of the by-laws becomes a member of the incorporated association by

(a) attending a meeting of members, or

(b) applying for membership or otherwise informing the incorporated association that he wishes to become a member.

**Resignation of membership**

32 A member of an incorporated association, other than an incorporated association with a capital stock divided into shares, may resign membership by notice in writing sent to the incorporated association.

**Application of Business Corporations Act**

33 If its articles so provide, an incorporated association may have a capital stock divided into shares and in that case the following provisions of the Business Corporations Act apply, notwithstanding anything in this Act:

(a) Part 5, except sections 39, 40 and 41;

(b) Part 6 as it relates to shares;

(c) section 184.

[Recommendations 20(a), 31]

**Evidence of membership**

34(1) An incorporated association may issue membership cards or certificates to evidence membership.

(2) There shall be stated legibly on a membership card or certificate issued by an incorporated association that has membership of more than one class

(a) the rights, privileges, restrictions and conditions attached to the memberships of each class that exists when the membership card or certificate is issued, or

(b) that the class of membership that it represents has rights, privileges, restrictions or conditions attached to it and that the incorporated association will furnish to a member, on demand and without charge, a full copy of the text of the rights, privileges, restrictions and conditions attached to each class of membership.

**Transfer of membership**

35 The interest of a member in an incorporated association is not transferable and ceases to exist when the member dies or ceases to be a member, except in a case where

(a) the articles otherwise provide, or

(b) the incorporated association has a capital stock divided into shares.

**Register of members**

**36**(1) An incorporated association that does not have a capital stock divided into shares shall maintain a register of members entitled to vote that contains

(a) the names and the latest known addresses of each person who is or who, during the previous year, has been a member of the incorporated association, and

(b) the date on which each person referred to in clause (a) became and ceased to be a member.

(2) The names in the register shall be alphabetically or otherwise systematically arranged in a manner capable of producing information about all members in intelligible written form in a reasonable time.

## PART 8

## BY-LAWS

**Notes to Part 8.**

1. The affairs of an incorporated association would have to be regulated by by-laws (S. 37). The association could adopt its own by-laws (s. 38(2)), but would have to file them with the Registrar (s. 40(2). By-laws made by regulation would apply to everything not covered by the association's own by-laws (s. 38(1)).

2. The incorporators could adopt by-laws for an incorporated association (s. 39). Thereafter, the members of the association would adopt or amend by-laws by special resolution (s. 40(1). (A special resolution requires either the signatures of all of the members entitled to vote or a vote carried after appropriate notice by a 2/3 majority of the votes cast.).

**Purpose of by-laws**

37 Subject to the articles and this Act,

(a) the affairs of an incorporated association, and

(b) the manner in which the activities of an incorporated association are carried on,

shall be regulated by by-laws.

[Recommendation 16(1)]

**Standard by-laws**

38(1) The Minister may prescribe by-laws, and those by-laws are, subject to subsection (2), the by-laws of every incorporated association.

(2) The articles and by-laws of an incorporated association, to the extent that they regulate the matters regulated by the prescribed by-laws, supersede the prescribed by-laws.

(3) Nothing in this section precludes the adoption of a by-law that relates to affairs or activities of the incorporated association that are not dealt with in the prescribed by-laws.

[Recommendation 16(1)]

**Initial by-laws**

**39** By-laws signed by the incorporators of an incorporated association and sent to the Registrar as part of the material for incorporation are the by-laws of the incorporated association until they are repealed or changed under this Part.

**Special resolution**

**40**(1) The members of an incorporated association may by special resolution adopt, repeal and amend by-laws.

(2) A by-law and the repeal or amendment of a by-law have no effect until a copy is sent to the Registrar.

[Recommendation 16(3)]

## PART 9

## APPOINTMENT AND ELECTION OF DIRECTORS

Notes to Part 9.

1. An incorporated association which has solicited money from the public or received a government grant within the previous 3 years would have to have at least 3 directors. Any other incorporated association would have to have one director or more. (S. 41.) Apart from those requirements, the association could provide in its by-laws for the number of directors and it could provide for their qualifications and for their disqualification (s. 41).

2. Directors would be elected by majority or plurality votes of members and for terms of not more than 3 years (s. 43). Notices of changes of directors would have to be filed with the Registrar (s. 45).

3. Proceedings of directors would have to be regulated by by-laws (s. 46).

### Number and qualifications of directors

**41**(1) Subject to subsection (2), an incorporated association shall have 1 director or any greater number that the by-laws require.

(2) A soliciting incorporated association shall have at least 3 directors.

(3) The by-laws may prescribe qualifications and disqualifications for directors.

[Recommendation 21]

### First directors

**42** A director named in a notice referred to in section 3(1)(d) is a director of the incorporated association and holds office from the issue of the certificate of incorporation until the first meeting of members.

### Election of directors

**43**(1) The members of an incorporated association shall elect directors at the first meeting of members and at every annual meeting at which or at the end of which there is a vacancy in the board of directors.

(2) Directors shall be elected by ordinary resolution

or by vote of the members on those nominated.

(3) The term for which a director is elected shall expire no later than the end of the 3rd annual meeting of members following his election.

(4) The members may remove a director at any time by ordinary resolution.

(5) Subject to subsections (1) to (4), by-laws may provide for

(a) the election of directors, including cumulative voting,

(b) the term of office of directors,

(c) the resignation and removal of directors,

(d) the consequences of a failure to elect the requisite number of directors,

(e) the filling of vacancies in the board between annual meetings, and

(f) the appointment by the directors of additional directors, not exceeding 1/3 of the number of directors who held office at the expiration of the last annual meeting of members, to serve until the next annual meeting of members.

[Recommendation 21]

**Irregularities**

**44** An act of a director or officer of an incorporated association is valid notwithstanding an irregularity in his election or appointment or a defect in his qualification.

**Notice of change of directors**

**45**(1) Within 15 days after a change is made among the directors, an incorporated association shall send to the Registrar a notice in the prescribed form setting out the change, and the Registrar shall file the notice.

(2) Any interested person or the Registrar may apply to the Court for an order requiring an incorporated association to comply with subsection (1), and the Court may so order and make any further order it thinks fit.

**Proceedings of directors**

**46** The by-laws shall regulate the proceedings of

directors.

## PART 10

## POWERS, DUTIES AND OBLIGATIONS OF DIRECTORS

Notes to Part 10.

1. The directors would manage the affairs of an incorporated association, but the by-laws or articles could provide otherwise (s. 47(1)), except for some basic powers.

2. S. 49 would impose obligations of good faith, care, diligence and skill upon the directors of an incorporated association. A provision taken from BCA s. 115, which permits a director to be interested in a contract with his corporation, is followed by s. 48.

3. S. 50 would allow an incorporated association to indemnify a director against liability to others for his actions as a director and to insure him against such liability and against some kinds of liability to the association.

Directors' duties

47(1) Except as otherwise provided in this Act, the articles and the by-laws, the directors shall manage the activities and affairs of an incorporated association.

(2) The by-laws shall authorize the directors to

(a) borrow money, give a guarantee, and give security,

(b) adopt forms of corporate documents and corporate records,

(c) issue membership cards and, if the incorporated association has a capital stock divided into shares, share certificates, and

(d) appoint an auditor to hold office until the first meeting of members.

(3) The by-laws shall provide that every director of the incorporated association shall receive notice of and have the right to attend and be heard at every meeting of members.

[Recommendation 22(a)]

Disclosure by directors and officers in relation to contracts

48(1) A director or officer of an incorporated association who

(a) is a party to a material contract or proposed material contract with the incorporated association, or

(b) is a director or an officer of or has a material interest in any person who is a party to a material contract or proposed material contract with the incorporated association,

shall disclose in writing to the incorporated association or request to have entered in the minutes of meetings of directors the nature and extent of his interest.

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

(a) at the meeting at which a proposed contract is first considered,

(b) if the director was not interested in a proposed contract at the time of the meeting referred to in clause (a), at the first meeting after he becomes so interested,

(c) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested, or

(d) if a person who is interested in a contract later becomes a director, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

(a) forthwith after he becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors,

(b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested, or

(c) if a person who is interested in a contract later becomes an officer, forthwith after he becomes an officer.

(4) If a material contract or proposed material contract is one that, in the ordinary course of the incorporated association's business, would not require approval by the directors or members, a director or officer shall disclose in writing to the incorporated association, or request to have entered in the minutes

of meetings of directors, the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(5) A director referred to in subsection (1) shall not vote on any resolution to approve the contract unless the contract is

(a) an arrangement by way of security for money lent to or obligations undertaken by him, or by a body corporate in which he has an interest, for the benefit of the incorporated association or an affiliate,

(b) a contract relating primarily to his remuneration as a director, officer, employee or agent of the incorporated association or an affiliate,

(c) a contract for indemnity or insurance under section 50, or

(d) a contract with an affiliate.

(6) For the purpose of this section, a general notice to the directors by a director or officer is a sufficient disclosure of interest in relation to any contract made between the incorporated association and a person in which the director has a material interest or of which he is a director or officer if

(a) the notice declares he is a director or officer of or has a material interest in the person and is to be regarded as interested in any contract made or to be made by the incorporated association with that person, and states the nature and extent of his interest,

(b) at the time disclosure would otherwise be required under subsection (2), (3) or (4), as the case may be, the extent of his interest in that person is not greater than that stated in the notice, and

(c) the notice is given within the 12-month period immediately preceding the time at which disclosure would otherwise be required under subsection (2), (3) or (4), as the case may be.

(7) If a material contract is made between an incorporated association and one or more of its directors or officers, or between an incorporated association and another person of which a director or officer of the incorporated association is a director or officer or in which he has a material interest,

(a) the contract is neither void nor voidable by reason only of that relationship, or by reason

only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or committee of directors that authorized the contract, and

(b) a director or officer or former director or officer of the incorporated association to whom a profit accrues as a result of the making of the contract is not liable to account to the incorporated association for that profit by reason only of holding office as a director or officer,

if the director or officer disclosed his interest in accordance with subsection (2), (3), (4) or (6), as the case may be, and the contract was approved by the directors or the shareholders and it was reasonable and fair to the incorporated association at the time it was approved.

[Recommendation 22(c)]

**Duty of care**

**49**(1) Every director and officer of an incorporated association in exercising his powers and discharging his duties shall

(a) act honestly and in good faith with a view to the best interests of thecorporation, and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every director and officer of an incorporated association shall comply with this Act, the regulations, articles and by-laws.

(3) No provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves him from liability for a breach of that duty.

(4) In a proceeding in which relief is claimed against a director or officer for a breach of a duty under this section, the court in which the proceeding is brought may, if it appears that the director or officer has acted honestly and reasonably and ought fairly to be excused, relieve the director or officer either wholly or partly from liability for the breach.

[Recommendation 22(a), (b)]

**Indemnification**

50(1) Except in respect of an action by or on behalf of the incorporated association to procure a judgment in its favour, an incorporated association may indemnify a director or officer of the incorporated association and his heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of that incorporated association, if

(a) he acted honestly and in good faith with a view to the best interests of the incorporated association, and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

(2) An incorporated association may with the approval of the Court indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the incorporated association to procure a judgment in its favour, to which he is made a party by reason of being or having been a director or an officer of the incorporated association, against all costs, charges and expenses reasonably incurred by him in connection with the action if he fulfils the conditions set out in subsections (1)(a) and (b).

(3) Notwithstanding anything in this section, a person referred to in subsection (1) is entitled to indemnity from the incorporated association in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the incorporated association, if the person seeking indemnity

(a) was substantially successful on the merits in his defence of the action or proceeding,

(b) fulfils the conditions set out in subsection (1)(a) and (b), and

(c) is fairly and reasonably entitled to indemnity.

(4) An incorporated association may purchase and maintain insurance for the benefit of any person referred to in subsection (1) against any liability incurred by him in his capacity as a director or officer of the incorporated association, except when the liability relates to his failure to act honestly

and in good faith with a view to the best interests of the incorporated association.

(5) An incorporated association or a person referred to in subsection (1) may apply to the Court for an order approving an indemnity under this section and the Court may so order and make any further order it thinks fit.

(6) On an application under subsection (5), the Court may order notice to be given to any interested person and that person is entitled to appear and be heard in person or by counsel.

[Recommendation 22(d)]

## PART 11

## PROCEEDINGS OF MEMBERS

**Notes to Part 11.**

1. Much about members' meetings would be left to the by-laws. There would have to be an annual meeting (s. 53), and members holding 5% of the votes could force the calling of a meeting (s. 60), but the calling of meetings would otherwise be left to the directors (s. 53(1)(b)). A member would be entitled to have a matter put upon the agenda of the next meeting of members (s. 55).

**By-laws**

51(1) Subject to this Act, the by-laws shall regulate the proceedings of the members of an incorporated association.

(2) Subject to this Act, the by-laws may provide for

(a) the fixing of a record date to determine the members who are to receive notice of a meeting or any other notice or statement,

(b) notice of meetings,

(c) the time and place of meetings,

(d) waiver of notice of meetings,

(e) the conduct of meetings, including quorum and voting at meetings, and

(f) the manner of bringing resolutions forward.

**Place of meetings**

52 Meetings of the members of an incorporated association shall be held at the place provided in the by-laws or, in the absence of such a provision, at the place that the directors determine and, unless the by-laws otherwise provide or all the members entitled to vote at the meeting so agree, shall be held in Alberta.

**Directors to call meetings**

53(1) The directors of an incorporated association

(a) shall call an annual meeting of members to be held not later than 18 months after

(i) the date of its incorporation, or

(ii) the date of its certificate of amalgamation, in the case of an amalgamated incorporated association,

and subsequently not later than 15 months after holding the last preceding annual meeting, and

(b) may at any time call a special meeting of members.

(2) For the purposes of subsection (1)(a), the date this Act comes into force is deemed to be the date of incorporation in the case of an incorporated association referred to in section 9(1).

(3) Notwithstanding subsection (1), the incorporated association may apply to the Court for an order extending the time in which the first or the next annual meeting of the incorporated association may be held.

(4) If, on an application under subsection (3), the Court is satisfied that it is in the best interests of the incorporated association, the Court may extend the time in which the first or next annual meeting of the incorporated association may be held, in any manner and on any terms it thinks fit.

**Notice of meetings**

**54**(1) Except as provided in subsection (2), a notice of a meeting of members shall state

(a) the general nature of the business to be transacted, and

(b) the text of any special resolution to be submitted to the meeting.

(2) A notice of an annual meeting of members need not mention that the following business will be transacted:

(a) the consideration of the financial statements and auditor's report,

(b) the election of directors, and

(c) the reappointment of the incumbent auditor.

(3) Notice of the time and place of a meeting of the members shall be given or sent to each member entitled to vote at the meeting

(a) at least 21 days before the meeting, in the case of a meeting at which a special resolution will be submitted to the meeting, or

(b) at least 7 days before the meeting in any other case.

(4) The text of a special resolution may be amended at a meeting of members if the amendments correct manifest errors or are not material.

**Proposals**

55 A member entitled to vote at an annual meeting of members may

(a) submit to the incorporated corporation notice of any matter that he proposes to raise at a meeting, and

(b) require that the matter be included in the notice of meeting next sent by the incorporated association as business to be transacted at that meeting.

**Quorum**

56(1) Unless the by-laws otherwise provide, a quorum of members is present at a meeting of members if the holder or holders of a majority of the memberships entitled to vote at the meeting are present in person or, if the by-laws so provide, represented by proxy.

(2) If a quorum is present at the opening of a meeting of members, the members present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present at the opening of a meeting of members, the members present may adjourn the meeting to a fixed time and place but may not transact any other business at the meeting.

(4) If an incorporated association has only 1 member, or only 1 member of a class, the member present in person or, if the by-laws so provide, by proxy, constitutes a meeting.

**Voting**

57(1) Unless the articles otherwise provide, each member of an incorporated association is entitled to 1 vote at a meeting of members.

(2) Subject to subsection (3), and except as provided in the by-laws, a member shall vote in person and not by proxy.

(3) If a body corporate or association is a member of an incorporated association, the incorporated association shall recognize any individual authorized

by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of members of the incorporated association.

(4) An individual authorized under subsection (3) may exercise on behalf of the body corporate or association he represents all the powers it could exercise if it were an individual member.

**Ballot vote**

58 A member or proxy holder entitled to vote at a meeting may demand a ballot on any vote and, in a case where a vote by show of hands is taken, may do so before or on the declaration of the result of the vote by show of hands.

**Resolution instead of meeting**

59(1) A resolution in writing signed by all the members entitled to vote on that resolution is as valid as if it had been passed at a meeting of the members.

(2) A resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of members, and signed by all the members entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of members.

(3) An incorporated association shall keep a copy of every resolution referred to in subsection (1) or (2) with the minutes of the meetings of members.

**Meeting on requisition of members**

60(1) A member or members of the incorporated association entitled to cast not less than 5% of the votes at a meeting sought to be held may requisition the directors to call a meeting of members for the purposes stated in the requisition.

(2) The requisition referred to in subsection (1) may consist of several documents in similar form, each signed by 1 or more members, and shall state the business to be transacted at the meeting, and shall be sent to each director and to the registered office of the incorporated association.

(3) On receiving the requisition referred to in subsection (1), the directors shall call a meeting of members to transact the business unless the directors have already called a meeting and given notice under section 54.

(4) If the directors do not call a meeting within 21 days after receiving the requisition referred to in subsection (1), any member who signed the requisition may call the meeting.

(5) A meeting called under this section shall be called as nearly as possible to the manner in which meetings are to be called pursuant to the by-laws and this Part.

(6) Unless the members otherwise resolve at a meeting called under subsection (4), the incorporated association shall reimburse the members for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

**Meeting called by Court**

**61**(1) The Court, on the application of a director or a member entitled to vote at a meeting of members, may order the meeting to be called, held and conducted in the manner the Court directs if the Court

(a) is satisfied that it is impracticable to call the meeting in the manner in which meetings of those members may be called, or to conduct the meeting in the manner prescribed by the by-laws and this Act, or

(b) considers it appropriate to so order for any other reason.

(2) Without restricting the generality of subsection (1), the Court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting called, held and conducted pursuant to this section is for all purposes a meeting of members of the incorporated association duly called, held and conducted.

## PART 12

## DISPUTED ELECTIONS

**Note to Part 12.**

**This subject is not referred to in Part II of this report. We think that it would be a useful provision.**

**Disputed election or appointment**

62(1) An incorporated association or a member or director may apply to the Court to determine any controversy with respect to an election or appointment of a director or auditor of the incorporated association.

(2) On an application under this section, the Court may make any order it thinks fit including, without limitation, any one or more of the following:

(a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the controversy;

(b) an order declaring the result of the disputed election or appointment;

(c) an order requiring a new election or appointment, and including in the order directions for the management of the activities and affairs of the incorporated association until a new election is held or appointment made;

(d) an order determining the voting rights of members and of persons claiming to be members.

## PART 13

## FINANCIAL AFFAIRS

Notes to Part 13.

1. The draft Act would leave to regulations the standards to which financial statements are to be prepared. Under s. 63(3) the financial statements would have to disclose on an individual basis any amounts paid to directors and officers and on an aggregate basis any amounts paid to employees.

2. Under s. 27(2) a member would be entitled to see the most recent financial statements at the association's registered or records office, and under s. 64(3) he would be entitled to have them considered at the association's annual meeting.

3. An incorporated association which within 3 years has solicited public money or received a government grant would have to

(a) provide comparative financial statements for the preceding year (s. 63(4);

(b) send copies to members 21 days before the annual meeting, or, if the articles of incorporation permitted, give notice that the financial statements are available at the records office (s. 64); and

(c) file the statements with the Registrar within 15 days after the annual meeting (s. 65).

4. The draft Act would require a soliciting incorporated association to have an independent auditor who would be required under s. 73 to make an examination sufficient to enable him to express an opinion on the financial statements in prescribed form (though s. 73(1) would provide for exemption by regulation of incorporated associations which should not be put to the expense of a formal audit). Under s. 68(1), any other incorporated association could by two thirds of the votes cast appoint a member or other person to examine the financial statements and report to the annual meeting, or, by a resolution consented to by all members, could dispense with auditors entirely.

5. The general rule would be that the members would appoint an auditor by resolution at every annual meeting (s. 67(2)). However, the first directors could appoint an auditor to hold office until the first annual meeting (s. 67(1)), and the directors would have power to fill vacancies between annual meetings (s. 70). The Part contains extensive provisions

dealing with the auditor's duties and protecting his position.

6. S. 76 would deal with the subject of loans and guarantees in favour of bodies affiliated with an incorporated association, members and directors of the incorporated association and its affiliates, and associates of such members and directors. Only in 3 kinds of cases could the incorporated association give financial assistance to any of these. First, it could give assistance to a member in the ordinary course of the association's activities. Second, in order to further its own purposes it could give assistance to another incorporated association with similar purposes. Third, it could give assistance on account of expenditures incurred or to be incurred on its behalf. Such assistance would have to be provided for in the articles of incorporation.

Annual financial statements

63(1) The directors of an incorporated association shall place before the members of the incorporated association at every annual meeting

(a) financial statements relating to the last financial period completed by the incorporated association,

(b) if the last financial period ended more than 6 months before the annual meeting, additional financial statements relating to a period beginning immediately after the end of the last financial period and ending on a date not earlier than 6 months before the annual meeting,

(c) the report of the auditor if an auditor has been appointed, and

(d) any further information respecting the financial position of the incorporated association and the results of its operations required by the articles or the by-laws.

(2) If the incorporated association has not completed a financial period, the financial statements required by subsection (1) shall relate to a period beginning on the date the incorporated association came into existence and ending on a date not earlier than 6 months before the annual meeting.

(3) The financial statements referred to in subsection (1) shall include

(a) a statement of the remuneration, if any, paid to each director and officer, and

(b) a statement of the aggregate remuneration, if any, paid to the employees.

(4) The financial statements of a soliciting incorporated association for a particular financial period shall include comparative financial statements for the immediately preceding financial period.

(5) The comparative financial statements required under subsection (4) may be omitted if the reason for the omission is set out in the financial statements, or in a note to them, to be placed before the members at the annual meeting.

(6) Financial statements required by this section shall be as prescribed.

[Recommendation 24]

**Copies to members**

**64**(1) A soliciting incorporated association shall, not less than 21 days before the annual meeting of members or before the signing of a resolution in lieu of the annual meeting, send a copy of the documents referred to in section 63 to each member of the incorporated association.

(2) An incorporated association need not send a copy of the documents to a member of the incorporated association under subsection (1) if

(a) the articles or by-laws so provide and the incorporated association

(i) sends a notice to each member not less than 21 days before the annual meeting before which the documents will be laid, or

(ii) publishes a notice at least once a week for 2 consecutive weeks next preceding the annual meeting

that the documents are available to be examined at the records office of the incorporated association during the business hours of the incorporated association by any member of the incorporated association,

or

(b) the member informs the incorporated association that he does not want to receive the documents.

(3) A member of an incorporated association which is not a soliciting incorporated association is entitled

to consider the financial statements at the annual meeting of members.

[Recommendation 24]

**Copies to Registrar**

65 A soliciting incorporated association shall send to the documents referred to in section 63 with the Registrar within 15 days after the annual meeting.

[Recommendation 24]

**Qualifications of auditor**

66(1) Subject to subsections (2) and (6), a person may not be an auditor of an incorporated association unless he is independent of the incorporated association and its affiliates and the directors and officers of the incorporated association and its affiliates.

(2) For the purposes of this section,

(a) independence is a question of fact, and

(b) a person is deemed not to be independent if he or his business partner

(i) is a business partner, a director, an officer or an employee of the incorporated association or any of its affiliates, or a business partner of any director, officer or employee of the incorporated association or any of its affiliates, or

(ii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the incorporated association or any of its affiliates within 2 years of his proposed appointment as auditor of the incorporated association.

(3) An auditor who becomes disqualified under this section shall, subject to subsection (5), resign forthwith after becoming aware of his disqualification.

(4) An interested person may apply to the Court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

(5) An interested person may apply to the Court for an order exempting an auditor from disqualification under this section and the Court may, if it is satisfied that an exemption would not unfairly prejudice the members, make an exemption order on any terms it thinks fit, which order may have retrospective

effect.

**Appointment of auditor**

67(1) The directors may appoint an auditor to hold office until the first meeting of members, and an auditor so appointed is eligible for reappointment by the members under subsection (2).

(2) Subject to section 68, the members of an incorporated association shall, by ordinary resolution at the first annual meeting of members and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(3) Notwithstanding subsection (2), if an auditor is not appointed at a meeting of members, the incumbent auditor continues in office until his successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the members or, if not so fixed, may be fixed by the directors.

**When auditor required**

68(1) Subject to subsection (2), the members of an incorporated association may

(a) in lieu of appointing an auditor, appoint a member of the association or other person who is independent of the directors and officers of the incorporated association and is not a person described in section 66(2)(b), to

(i) review the financial statements of the association and

(ii) report thereon to the annual meeting, or

(b) resolve not to appoint an auditor.

(2) Subsection (1) does not apply to a soliciting incorporated association.

(3) A resolution under subsection (1) is valid only until the next following annual meeting of members.

(4) A resolution under subsection (1)(a) is not valid unless it is carried by a majority of two thirds of the votes cast.

(5) A resolution under subsection (1)(b) is not valid unless it is consented to by all the members, including members not otherwise entitled to vote.

(6) A person appointed under subsection (1)(a) has

all the rights, powers and immunities of an auditor appointed under this Part.

[Recommendation 25]

**Term of office and removal**

**69**(1) An auditor of an incorporated association ceases to hold office when he

(a) dies or resigns, or

(b) is removed pursuant to subsection (3).

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the incorporated association or at the time specified in the resignation, whichever is later.

(3) The members of an incorporated association may by ordinary resolution at a special meeting remove from office the auditor, other than an auditor appointed by the Court under section 71.

(4) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if not so filled, may be filled under section 70.

**Filling vacancies**

**70**(1) Subject to subsection (3), the directors shall forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office shall, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of members to fill the vacancy and, if they fail to call a meeting or if there are no directors, any member may call the meeting.

(3) The articles of an incorporated association may provide that a vacancy in the office of auditor shall only be filled by vote of the members.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.

**Court may appoint auditor**

**71**(1) If an incorporated association does not have an auditor, the Court may, on the application of a member, appoint and fix the remuneration of an auditor, who shall hold office until an auditor is appointed by the members.

(2) Subsection (1) does not apply if the members have

resolved under section 68(1)(b) not to appoint an auditor.

[Recommendation 25]

**Rights and duties of auditor**

**72**(1) The auditor of an incorporated association is entitled to

(a) receive notice of every meeting of members,

(b) attend and be heard at every meeting on matters relating to his duties as auditor, and

(c) submit to the incorporated association and have read at the next meeting of members a written statement on matters relating to his duties as auditor.

(2) If a director or member of an incorporated association, whether or not the member is entitled to vote at the meeting, gives written notice to the auditor or a former auditor of the incorporated association not less than 10 days before a meeting of members, the auditor or former auditor shall attend the meeting at the expense of the incorporated association and answer questions relating to his duties as auditor.

(3) A director or member who sends a notice referred to in subsection (2) shall concurrently send a copy of the notice to the incorporated association.

(4) Upon the application of an incorporated association or its auditor, the Court may

(a) exempt the auditor from attending at any or all meetings of the incorporated association, and

(b) exempt the incorporated association from paying the expenses of an auditor for attending a meeting from attending which the auditor is exempted.

(5) An auditor who

(a) resigns,

(b) receives a notice or otherwise learns of a meeting of directors or members called for the purpose of removing him from office,

(c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed to fill the office of auditor, whether because of resignation or removal

of the incumbent auditor or because his term of office has expired or is about to expire, or

(d) receives a notice or otherwise learns of a meeting of members at which a resolution referred to in section 69 is to be proposed,

is entitled to submit to the incorporated association a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(6) The incorporated association shall forthwith send to every member entitled to receive notice of any meeting referred to in subsection (1) a copy of the statement referred to in subsection (5).

(7) No person shall accept an appointment as, or consent to be appointed as, auditor of an incorporated association if he is replacing an auditor who has resigned or been removed or whose term of office has expired or is about to expire until he has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he is to be replaced.

(8) Notwithstanding subsection (7), a person who is otherwise qualified may accept an appointment or consent to be appointed as auditor of an incorporated association if he does not receive a reply to a request under subsection (7) within 15 days.

**Auditor's duty to examine**

**73**(1) Except as provided in subsection (2), an auditor of an incorporated association shall make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Act to be placed before the members, except those financial statements or parts of those statements that relate to the earlier of the 2 financial years referred to in section 63(4).

(2) Under the circumstances and to the extent prescribed, an auditor is relieved of the duty of examination imposed by subsection (1).

(3) Notwithstanding section 74, an auditor of an incorporated association may reasonably rely on the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the incorporated association.

(4) For the purpose of subsection (3), reasonableness is a question of fact.

(5) Subsection (3) applies whether or not the

financial statements of the holding incorporated association reported on by the auditor are in consolidated form.

**Auditor's right to information**

74(1) On the demand of the auditor of an incorporated association the present or former directors, officers, employees or agents of the incorporated association and the former auditors of the incorporated association shall furnish

(a) information and explanations, and

(b) access to records, documents, books, accounts and vouchers of the incorporated association or any of its subsidiaries

that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 73 and that the directors, officers, employees, agents or former auditors are reasonably able to furnish.

(2) On the demand of the auditor of an incorporated association, the directors of the incorporated association shall

(a) to the extent they are reasonably able to do so, obtain from the present or former directors, officers, employees, agents or auditors of any subsidiary of the incorporated association the information and explanations that the present or former directors, officers, employees, agents or auditors are reasonably able to furnish and that are, in the opinion of the incorporated association's auditor, necessary to enable him to make the examination and report required under section 73, and

(b) furnish the information and explanations so obtained to the incorporated association's auditor.

**Qualified privilege**

75 Any oral or written statement or report made under this Act by the auditor or a former auditor of an incorporated association has qualified privilege.

**Prohibited financial assistance**

76(1) Except as provided in subsection (2), an incorporated association shall not, directly or indirectly, give financial assistance by means of a donation, loan, guarantee or otherwise

(a) to a member or director of the incorporated

association or of an affiliated incorporated association,

(b) to an associate of a member or director of

(i) the incorporated association, or

(ii) an affiliated incorporated association, or

(c) to any person for the purpose of or in connection with a purchase of a membership in the incorporated association.

(2) Nothing in this section prohibits an incorporated association from giving financial assistance by way of donation, loan, guarantee or otherwise

(a) pursuant to the articles and in the ordinary course of activities carrying out the purposes stated in the articles,

(b) if the member is a body corporate with similar purposes and the financial assistance is given pursuant to the articles and as part of an arrangement entered into to further a purpose of the incorporated association giving the assistance, or

(c) on account of expenditures incurred or to be incurred on behalf of the incorporated association.

(3) A contract made by an incorporated association in contravention of this section may be enforced by the incorporated association or by a lender for value in good faith without notice of the contravention.

(4) Unless disclosure is otherwise made by an incorporated association, a financial statement referred to in this Part shall contain the following information with respect to each case in which financial assistance is given by the incorporated association by way of donation, loan, guarantee or otherwise, whether in contravention of this section or not, to any of the persons referred to in subsection (1), if the financial assistance was given during the financial year or period to which the statement relates or remains outstanding at the end of that financial year or period:

(a) the identity of the person to whom the financial assistance was given;

(b) the nature of the financial assistance given;

(c) the amount of the financial assistance initially given and the amount, if any,

outstanding.

[Recommendation 10(c), (d)]

## PART 14

## DEBT SECURITIES

Notes to Part 14.

An incorporated association may issue debt securities. Although this is likely to be rare, the possibility should be covered. Because it is likely to be rare and because the issue of debt securities is already a legally complex transaction, it seems reasonable simply to make a cross reference to Parts 6, 7 and 8 of the Business Corporations Act, which already deal with debt securities of business corporations. BCA Part 6 deals with the issue and transfer of debt securities. BCA Part 7 has to do with trust indentures and the registration of debt obligations. BCA Part 8 has to do with receivers and receiver-managers. (BCA Part 6 also deals with share certificates and other equity instruments, but memberships and shares under the draft Act would not be negotiated and the references to them in Part 6 need not be incorporated into the proposed statute.)

Application of Business Corporations Act

77 The following provisions of the Business Corporations Act apply to an incorporated association and to debt securities issued by an incorporated association:

(a) Part 6 as it relates to debt securities;

(b) Part 7;

(c) Part 8.

# PART 15

## FUNDAMENTAL CHANGES

### Notes to Part 15

1. Generally speaking, the draft Act would allow an incorporated association to change anything in its articles of association. It could do so by special resolution, that is, a resolution signed by all the members entitled to vote or a resolution passed after proper notice by a majority of 2 to 1 or more (s. 78(1)). A class of members whose membership rights are affected would have a separate vote (s. 79).

2. There would be two major exceptions to the power to change the articles by special resolution alone. First, a soliciting incorporated association would not be able to change its purposes or remove a restriction upon its activities without leave of the Court (s. 78(4); this would help to ensure that money raised for charity is applied to the purpose for which the charity is established. Second, an incorporated association which had both the income and liquidation distribution restriction would not be able to change that restriction at all (s. 78(2)).

3. Under ss. 83 - 87, incorporated associations could amalgamate. (There is no provision for amalgamation with extra-provincial non-profit corporations, but one of these could "continue" under the proposed Act and then amalgamate.) The amalgamation would be effected by agreement approved by special resolutions and filed with the Registrar.

4. S. 88 would allow an extra-provincial non-profit corporation to transfer its registration to the proposed Act. S. 89 would allow an Alberta incorporated association to terminate its registration under the proposed Act if it has transferred its registration to a statute in another territorial jurisdiction. These provisions would allow non-profit corporations to "migrate" from jurisdiction to jurisdiction, or at least provide for the Alberta side of migration each way.

5. S. 90 would require the approval of the members to a disposition of substantially all of the property of an incorporated association. This would require special notice and a special resolution. This point is not referred to in Part II of this report but we think that it should be covered by the proposed statute.

### Amendment of articles

78(1) Subject to this section, an incorporated association may amend its articles by special resolution.

(2) Except to add a provision described in section 6(1), if the articles of an incorporated association contain a provision referred to in section 5(b), the incorporated association shall not thereafter amend its articles to restrict, repeal or replace that provision.

(3) An incorporated association may not change its name in contravention of Part 2.

(4) A soliciting incorporated association may not amend its articles to add, change or remove

(a) a purpose for which the incorporated association is incorporated, or

(b) a restriction on the activities that the incorporated association may carry on,

without leave of the Court.

[Recommendation 16(2)]

**Class votes**

79(1) The holders of a class of membership are entitled to vote separately as a class on a proposal to amend the articles

(a) to change the number of

(i) memberships of that class, or

(ii) memberships of a class having rights or privileges equal or superior to the rights or privileges attaching to memberships of that class,

or

(b) to otherwise effect a change in the relative rights and privileges attaching to memberships of that class as opposed to memberships of another class.

(2) Subsection (1) applies whether or not memberships of a class otherwise carry the right to vote.

(3) A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the memberships of each class entitled to vote separately on the amendment as a class approve the amendment by a special resolution.

**Articles of amendment**

**80**(1) After an amendment is adopted under this Part, the incorporated association shall send articles of amendment in the prescribed form to the Registrar.

(2) If an amendment is to change the name of an incorporated association, the incorporated association shall send documents relating to corporate names that are prescribed by the regulations to the Registrar unless he provides otherwise.

(3) On receipt of articles of amendment and the prescribed fees, the Registrar shall issue a certificate of amendment.

**Effect of amendment**

**81**(1) An amendment becomes effective on the date shown in the certificate of amendment, and the articles are amended accordingly.

(2) No amendment to the articles affects an existing cause of action or claim or liability to prosecution in favour of or against the incorporated association or any of its directors or officers, or any civil, criminal or administrative action or proceeding to which an incorporated association or any of its directors or officers is a party.

**Restatement of articles**

**82**(1) An incorporated association may at any time, and shall when reasonably directed by the Registrar, restate by special resolution the articles of incorporation as amended.

(2) The incorporated association shall send restated articles of incorporation in the prescribed form to the Registrar.

(3) On receipt of restated articles of incorporation, the Registrar shall issue a certificate of registration of restated articles.

(4) Restated articles of incorporation are effective on the date shown in the certificate of registration of restated articles and supersede the original articles of incorporation and all amendments to them.

**Amalgamation**

**83**(1) Subject to subsection (2), 2 or more incorporated associations may amalgamate and continue as 1 incorporated association.

(2) An incorporated association whose articles contain a provision referred to in section 5(a) may not

amalgamate with an incorporated association whose articles contain a provision referred to in section 5(b).

[Recommendation 26]

**Amalgamation agreement**

**84**(1) Each incorporated association proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out

(a) the provisions that are required to be included in articles of incorporation under section 4,

(b) the name and address of each proposed director of the amalgamated incorporated association,

(c) the manner in which the memberships of each amalgamating incorporated association are to be converted into memberships or debt securities of the amalgamated incorporated association,

(d) whether the by-laws of the amalgamated incorporated association are to be those of one of the amalgamating incorporated associations and, if not, a copy of the proposed by-laws, and

(e) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated incorporated association.

(2) If one or more of the amalgamating incorporated associations has a capital stock divided into shares, the agreement referred to in subsection (1) shall also set out

(a) the manner in which the shares are to be converted into shares or other memberships in the amalgamated incorporated association, and

(b) the manner of the payment of money instead of the issue of fractional shares of the amalgamated incorporated association.

[Recommendation 26]

**Adoption of agreement**

**85**(1) The directors of each amalgamating incorporated association shall submit the amalgamation agreement for approval to a meeting of the members of the

amalgamating incorporated association of which they are directors and, subject to subsection (4), to the holders of each class of those memberships.

(2) A notice of a meeting of members complying with the by-laws and section 54 shall be sent to each member of each amalgamating incorporated association and shall

(a) include or be accompanied by a copy or summary of the amalgamation agreement, and

(b) if the incorporated association has a capital stock divided into shares, state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 184 of the Business Corporations Act, but failure to make that statement does not invalidate an amalgamation.

(3) Each membership of an amalgamating incorporated association carries the right to vote in respect of an amalgamation whether or not it otherwise carries the right to vote.

(4) The holders of memberships of a class of membership of an amalgamated incorporated association are entitled to vote separately as a class in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those holders to vote as a class under section 79.

(5) Subject to subsection (4), an amalgamation agreement is adopted when the members of each amalgamating incorporated association have approved of the amalgamation by special resolution.

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement may be terminated by the directors of an amalgamating incorporated association, notwithstanding approval of the agreement by the members of all or any of the amalgamating incorporated associations.

[Recommendation 26]

**Articles of amalgamation**

86(1) Subject to section 85(6), after an amalgamation agreement has been adopted under section 85, articles of amalgamation in the prescribed form shall be sent to the Registrar together with the documents required by section 3(1)(c) and (d) and, if the name of the amalgamated incorporated association is not the same as that of one of the amalgamating incorporated associations, documents relating to corporate names prescribed by the regulations.

(2) The articles of amalgamation shall have attached to them the amalgamation agreement, if any, and a statutory declaration of a proposed director of the amalgamated incorporated association that establishes to the satisfaction of the Registrar that

(a) there are reasonable grounds for believing that

(i) the amalgamated incorporated association will be able to pay its liabilities as they become due, and

(ii) the realizable value of the amalgamated incorporated association's assets will not be less than the aggregate of its liabilities and stated capital of all classes, where applicable, and

(b) there are reasonable grounds for believing that

(i) no creditor will be prejudiced by the amalgamation, or

(ii) adequate notice has been given to all known creditors of the amalgamating incorporated associations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of subsection (2), adequate notice is given if

(a) a notice of the proposed amalgamation in writing is sent to each known creditor having a claim against the incorporated association that exceeds $1000,

(b) a notice of the proposed amalgamation is published once in a newspaper published or distributed in the place where the incorporated association has its registered office and reasonable notice of the proposed amalgamation is given in each province in Canada where the incorporated association carries on activities, and

(c) each notice states that the incorporated association intends to amalgamate with 1 or more specified incorporated associations in accordance with this Act unless a creditor of the incorporated association objects to the amalgamation within 30 days from the date of the notice.

(4) On receipt of articles of amalgamation and the other documents required by subsections (1) and (2),

and on receipt of the prescribed fees, the Registrar shall issue a certificate of amalgamation.

[Recommendation 26]

**Effect of amalgamation**

87 On the date shown in a certificate of amalgamation

(a) the amalgamation of the amalgamating incorporated associations and their continuance as 1 incorporated association become effective,

(b) the property of each amalgamating incorporated association continues to be the property of the amalgamated incorporated association,

(c) the amalgamated incorporated association continues to be liable for the obligations of each amalgamating incorporated association,

(d) an existing cause of action, claim or liability to prosecution is unaffected,

(e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating incorporated association may be continued to be prosecuted by or against the amalgamated incorporated association,

(f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating incorporated association may be enforced by or against the amalgamated incorporated association, and

(g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated incorporated association and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated incorporated association.

[Recommendation 26]

**Continuance into Alberta**

88(1) An extra-provincial non-profit corporation may, if so authorized by the laws of the jurisdiction where it is incorporated, apply to the Registrar for a certificate of continuance.

(2) The provisions of the articles of continuance of an extra-provincial non-profit corporation may, without

so stating, vary from the provisions of the extra-provincial non-profit corporation's act of incorporation, articles, letters patent or memorandum or articles of association if the variation is one which an incorporated association incorporated under this Act could effect by way of amendment to its articles.

(3) Articles of continuance in the prescribed form shall be sent to the Registrar together with

(a) documents relating to the corporate name that are prescribed by the regulations

(b) a notice of registered office and a notice of designated post office box and separate records office, if any, and

(c) a notice of directors in the prescribed form.

(4) On receipt of articles of continuance and the documents referred to in subsection (3), the Registrar shall issue a certificate of continuance.

(5) On the date shown in the certificate of continuance

(a) the extra-provincial non-profit corporation becomes an incorporated association to which this Act applies as if it had been incorporated under this Act,

(b) the articles of continuance are deemed to be the articles of incorporation of the incorporated association, and

(c) the certificate of continuance is deemed to be the certificate of incorporation of the incorporated association.

(6) The Registrar shall forthwith send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act was authorized.

(7) When an extra-provincial non-profit corporation is continued as an incorporated association under this Act,

(a) the property of the extra-provincial non-profit corporation continues to be the property of the incorporated association,

(b) the incorporated association continues to be liable for the obligations of the extra-provincial non-profit corporation,

(c) an existing cause of action, claim or

liability to prosecution is unaffected by the continuance,

(d) a civil, criminal or administrative action or proceeding pending by or against the extra-provincial non-profit corporation may be continued to be prosecuted by or against the incorporated association, and

(e) a conviction against, or ruling, order or judgment in favour of or against, the extra-provincial non-profit corporation may be enforced by or against the incorporated association.

[Recommendation 29]

**Continuance out of Alberta**

**89**(1) Subject to subsection (9), an incorporated association may, if

(a) it is authorized by the members in accordance with this section, and

(b) the Registrar approves the proposed continuance in another jurisdiction on being satisfied that the continuance will not adversely affect creditors or members of the incorporated association,

apply to the appropriate official or public body of another jurisdiction requesting that the incorporated association be continued as if it had been incorporated under the laws of that other jurisdiction.

(2) The incorporated association shall send to each member a notice of a meeting of members in accordance with section 54.

(3) Each membership in the incorporated association carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote.

(4) An application for continuance becomes authorized when the members voting on it approve of the continuance by a special resolution.

(5) The directors of an incorporated association may, if authorized by the members at the time of approving an application for continuance under this section, abandon the application without further approval of the members.

(6) On receipt of notice satisfactory to him that the incorporated association has been continued under the laws of another jurisdiction, and on giving his

so stating, vary from the provisions of the extra-provincial non-profit corporation's act of incorporation, articles, letters patent or memorandum or articles of association if the variation is one which an incorporated association incorporated under this Act could effect by way of amendment to its articles.

(3) Articles of continuance in the prescribed form shall be sent to the Registrar together with

(a) documents relating to the corporate name that are prescribed by the regulations

(b) a notice of registered office and a notice of designated post office box and separate records office, if any, and

(c) a notice of directors in the prescribed form.

(4) On receipt of articles of continuance and the documents referred to in subsection (3), the Registrar shall issue a certificate of continuance.

(5) On the date shown in the certificate of continuance

(a) the extra-provincial non-profit corporation becomes an incorporated association to which this Act applies as if it had been incorporated under this Act,

(b) the articles of continuance are deemed to be the articles of incorporation of the incorporated association, and

(c) the certificate of continuance is deemed to be the certificate of incorporation of the incorporated association.

(6) The Registrar shall forthwith send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act was authorized.

(7) When an extra-provincial non-profit corporation is continued as an incorporated association under this Act,

(a) the property of the extra-provincial non-profit corporation continues to be the property of the incorporated association,

(b) the incorporated association continues to be liable for the obligations of the extra-provincial non-profit corporation,

(c) an existing cause of action, claim or

liability to prosecution is unaffected by the continuance,

(d) a civil, criminal or administrative action or proceeding pending by or against the extra-provincial non-profit corporation may be continued to be prosecuted by or against the incorporated association, and

(e) a conviction against, or ruling, order or judgment in favour of or against, the extra-provincial non-profit corporation may be enforced by or against the incorporated association.

[Recommendation 29]

**Continuance out of Alberta**

**89**(1) Subject to subsection (9), an incorporated association may, if

(a) it is authorized by the members in accordance with this section, and

(b) the Registrar approves the proposed continuance in another jurisdiction on being satisfied that the continuance will not adversely affect creditors or members of the incorporated association,

apply to the appropriate official or public body of another jurisdiction requesting that the incorporated association be continued as if it had been incorporated under the laws of that other jurisdiction.

(2) The incorporated association shall send to each member a notice of a meeting of members in accordance with section 54.

(3) Each membership in the incorporated association carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote.

(4) An application for continuance becomes authorized when the members voting on it approve of the continuance by a special resolution.

(5) The directors of an incorporated association may, if authorized by the members at the time of approving an application for continuance under this section, abandon the application without further approval of the members.

(6) On receipt of notice satisfactory to him that the incorporated association has been continued under the laws of another jurisdiction, and on giving his

approval under subsection (1), the Registrar shall file the notice and issue a certificate of discontinuance.

(7) Section 148 applies with the necessary changes to the notice filed under subsection (6) as though the notice were articles that conform to law.

(8) On the date shown in the certificate of discontinuance, the incorporated association becomes an extra-provincial body corporate as if it had been incorporated under the laws of the other jurisdiction.

(9) An incorporated association shall not be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that

(a) the property of the incorporated association continues to be the property of the body corporate,

(b) the body corporate continues to be liable for the obligations of the incorporated association,

(c) an existing cause of action, claim or liability to prosecution is unaffected by the continuance,

(d) a civil, criminal or administrative action or proceeding pending by or against the incorporated association may be continued to be prosecuted by or against the body corporate, and

(e) a conviction against, or ruling, order or judgment in favour of or against, the incorporated association may be enforced by or against the body corporate.

[Recommendation 28]

**Extra ordinary sale, lease or exchange**

**90**(1) A sale, lease or exchange of all or substantially all the property of an incorporated association requires the approval of the members in accordance with this section.

(2) The incorporated association shall send to each member a notice of meeting of members in accordance with section 54, and the notice shall include or be accompanied by a copy or summary of the agreement of sale, lease or exchange.

(3) At the meeting referred to in subsection (2) the members may authorize the sale, lease or exchange and may fix, or authorize the directors to fix, any of its terms and conditions.

(4) Each membership in the corporation carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1), whether or not it otherwise carries the right to vote.

(5) The holders of a class of memberships of the corporation are entitled to vote separately as a class in respect of a sale, lease or exchange referred to in subsection (1) only if that class is affected by the sale, lease or exchange in a manner different from the memberships of another class.

(6) A sale, lease or exchange referred to in subsection (1) is adopted when the holders of each class entitled to vote on it approve of the sale, lease or exchange by a special resolution.

(7) The directors of an incorporated association may, if authorized by the members approving a proposed sale, lease or exchange, and subject to the rights of third parties, abandon the sale, lease or exchange without further approval of the members.

## PART 16

## BRANCHES AND LOCAL CORPORATIONS

### Notes to Part 16

1. A national or provincial charity may want to organize itself with local branches or chapters. This is entirely legitimate. The question is whether the proposed statute should make special provision for this.

2. Strictly speaking, it does not seem that any statutory foundation is necessary for the establishment of a branch. If a non-profit association wants to set up a local branch and delegate powers and responsibilities, there is nothing to stop it from doing so. If a non-profit association wants to make an arrangement with another corporation under which the latter would undertake certain geographical or functional parts of the first corporation's work, there is nothing to stop it from doing that either.

3. We note, however, that the Societies Act does provide for branch societies, and this may be some evidence of a felt need for specific legislative authority. Further, we understand from the Registrar of Corporations and others that the subject is one which causes difficulty, and we have received representations to the effect that specific legislative authority would be very helpful to some groups and would enable them to avoid pitfalls. We have therefore included the provisions which follow in this Part.

4. The Societies Act provision, s. 27, is quite vague. It is not clear whether a branch society is a separate legal entity. Probably it is not, because there is nothing that says it is, and because it apparently derives its powers by delegation from the principal society. But if the branch is not a legal entity, it is not at all clear what effect the section has, or that it has any effect at all. S. 91 would make it clear that a branch is not a separate legal entity and remains under the incorporated association's control.

### Branches

91(1) An incorporated association may

(a) establish a branch or branches of the corporation,

(b) provide for membership of a branch,

(c) delegate to the members of a branch power to manage a branch and to appoint officers and revoke a power so delegated,

(d) delegate to a branch powers and responsibilities with respect to the carrying on of the corporation's activities or part of them, and revoke a power or responsibility so delegated, and

(e) terminate the existence of a branch.

(2) A branch established under this section is not a separate corporation or entity.

**Co-operative arrangements**

92(1) A body corporate may enter into an arrangement providing for any matters described in subsection (2) with

(a) An incorporated association which is incorporated for the same purposes as the body corporate, or

(b) persons who propose to incorporate an incorporated association with such purposes.

(2) An arrangement under subsection (1) may provide for any or all of the following:

(a) the use by the incorporated association of a name similar to that of the body corporate,

(b) the purposes for which and the geographical area within which the incorporated association will carry on its activities,

(c) the entitlement of the holder of a subsisting membership in either the body corporate or the incorporated association to be a member of the other,

(d) any other matter involved in the pursuit of the common purposes, and

(e) the circumstances under which the body corporate or the incorporated association may terminate the arrangement and the consequences of termination.

(3) An arrangement duly made under subsection (1) is binding upon the incorporated association and the body corporate

(a) when the arrangement is made if the incorporated association then exists, or

(b) when the incorporated association is incorporated.

## PART 17

## INVESTIGATION

Notes to Part 17

1. Part 17 would give the Court power to order that an inspector investigate the affairs of an incorporated association and to confer on the inspector compulsory powers to acquire the necessary information. The inspector would not have any power to give any legal remedy or to require the incorporated association to do or to refrain from doing anything. His report would merely be information, though under s. 103 it would be admissible as evidence of the facts stated in it.

2. A member or former member of an incorporated association could apply to the Court for an investigation. If the incorporated association had both the income and liquidation distribution restrictions, the Registrar of Corporations would also have the right to apply; this would be something along the lines of the power which the Attorney General now has to apply for the supervision of a charity.

3. The applicant would have to satisfy the Court that there are sufficient grounds to conduct an investigation to determine whether serious abuses of various kinds are being carried on. The abuses would include fraud, dishonesty and oppression, and they would also include the carrying on of the associations activities for purposes not provided for or prohibited in its articles of incorporation.

4. The purpose of the investigation would be to obtain information which, if abuses are in fact being practised, could be used to facilitate legal action, including the liquidation of the incorporated association.

Court may order investigation

93(1) An application may be made to the Court ex parte or on any notice the Court requires

(a) by a member of an incorporated association,

(b) by a person who has been a member of the incorporated association within the year preceding the making of the application, or

(c) by the Registrar, in the case of an incorporated association the articles of which contain a provision referred to in section 5(b),

for an order under subsection (2) in respect of the incorporated association and any of its affiliates.

(2) If, on an application under subsection (1), it appears to the Court that there are sufficient grounds to conduct an investigation to determine whether

(a) the activities of the incorporated association or any of its affiliates are being or have been carried on with intent to defraud any person,

(b) the activities or affairs of the incorporated association or any of its affiliates are being or have been carried on or conducted, or the powers of the directors are being or have been exercised, in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, a member,

(c) the incorporated association or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be liquidated for a fraudulent or unlawful purpose,

(d) persons have acted fraudulently or dishonestly in connection with the formation, activities or affairs of the incorporated association or any of its affiliates, or

(e) the incorporated association has acted

(i) for a purpose other than the purpose or purposes, or

(ii) in contravention of a restriction

set out in its articles,

the Court may order an investigation to be made of the incorporated association and any of its affiliates.

(3) An applicant under this section is not required to give security for costs.

(4) The Court may order an application under this section to be heard in private.

(5) No person shall publish anything relating to proceedings under this section except with the authorization of the Court or the written consent of the incorporated association being investigated.

(6) Documents in the possession of the Court relating to an application under this section are confidential unless the Court otherwise orders.

(7) Subsections (5) and (6) do not apply to an order

of the Court under this section.

[Recommendation 28]

Scope of order

94 An order under section 93(2) may include any or all of the following:

(a) an order appointing an inspector, fixing the remuneration of an inspector, or replacing an inspector;

(b) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(c) an order authorizing an inspector to enter any premises in which the Court is satisfied there might be information that is relevant to the subject matter of the investigation, and to examine any thing and make copies of any document or record found on the premises;

(d) an order requiring any person to produce documents or records to the inspector;

(e) an order authorizing an inspector to conduct a hearing, administer oaths and examine any person on oath, and prescribing rules for the conduct of the hearing;

(f) an order requiring any person to attend a hearing conducted by an inspector and to give evidence on oath;

(g) an order giving directions to an inspector or any interested person on any matter arising in the investigation;

(h) an order requiring an inspector to make an interim or final report to the Court;

(i) an order determining whether a report of an inspector should be published and, if so, designating the persons to whom all or part of the report should be sent;

(j) an order requiring an inspector to discontinue an investigation;

(k) an order requiring any person other than the incorporated association to pay all or part of the costs of the investigation;

(l) any other order respecting the investigation that the Court considers to be appropriate.

[Recommendation 28]

**Costs of application**

**95** Unless the Court otherwise orders, the incorporated association shall pay the costs of the investigation.

**Directions**

**96** Any interested person may apply to the Court for direction on any matter arising in the investigation.

**Co-operation with other officials**

**97**(1) An inspector has the powers set out in the order appointing him.

(2) In addition to the powers set out in the order appointing him, an inspector may furnish information to, or exchange information and otherwise co-operate with, any public official in Canada or elsewhere who is authorized to exercise investigatory powers and who is investigating, in respect of the incorporated association, any allegation of improper conduct that is the same as or similar to the conduct described in section 93(2).

(3) An inspector shall on request produce to an interested person a copy of any order made under section 93(2).

**Hearings**

**98**(1) The Court may order that a hearing conducted by an inspector be heard in private.

(2) An individual who is being examined at a hearing conducted by an inspector has a right to be represented by counsel during the examination.

**Witnesses**

**99** A person shall not be excused from attending and giving evidence and producing books, papers, documents or records to an inspector under this Part on the grounds that the evidence, books, papers, documents or records may tend to incriminate him or subject him to any proceeding or penalty, but no evidence given shall be used or received against him in any proceedings thereafter instituted against him under any Act of Alberta.

**Statements privileged**

**100** An oral or written statement or report made by an inspector or any other person in an investigation

has absolute privilege.

**Solicitor-client privilege**

101 Nothing in this Part affects the privilege that exists in respect of a solicitor and his client.

**Copy of report**

102 Unless the Court otherwise orders, an inspector shall send a copy of his report to the incorporated association.

**Report as evidence**

103 A copy of the report of an inspector, certified as a true copy by the inspector, is admissible as evidence of the facts stated in it without proof of the inspector's appointment or of his signature.

[Recommendation 28]

## PART 18

## LIQUIDATION AND DISSOLUTION

Notes to Part 18.

1. The provisions for liquidation and dissolution under Part 18 are much the same as those in the Business Corporations Act: see Recommendation 32.

2. Ss. 105 and 106 would allow an incorporated association to provide for its own liquidation and dissolution. However, under s. 106(8), the Registrar or an interested person could apply to bring a voluntary liquidation under the supervision of the Court, and under s. 109 the Court, upon the application of a member can order a liquidation and dissolution if a member, creditor, director or officer is oppressed or unfairly prejudiced or if the Court thinks that a liquidation and dissolution would be just and equitable.

3. Under s. 107, the Registrar would have power to dissolve an incorporated association which had been inactive for 3 consecutive years or which was in default for a year in filing its annual return. Under s. 108, the Court could dissolve an incorporated association which is in default for 2 years in holding an annual meeting, which has defaulted in filing financial statements with the Registrar, which has acted outside its stated purposes or contravened a restriction upon its activities, or which has procured a certificate by misrepresentation.

Staying proceedings

104 Any proceedings taken under this Part to dissolve or to liquidate and dissolve an incorporated association shall be stayed if the incorporated association is at any time found to be insolvent within the meaning of the Bankruptcy Act (Canada).

Dissolution by directors or members

105(1) An incorporated association that has not issued any memberships and that has no property and no liabilities may be dissolved at any time by resolution of all the directors.

(2) An incorporated association that has no property and no liabilities may be dissolved by special resolution of the members or, if it has issued more than 1 class of memberships, by special resolution of the members of each class, whether or not they are otherwise entitled to vote.

(3) An incorporated association that has property or liabilities may be dissolved by special resolution of the members or, if it has issued more than 1 class of memberships, by special resolution of the members of each class, whether or not they are otherwise entitled to vote, if

(a) by the special resolution the members authorize the directors to cause the incorporated association to distribute all property and discharge all liabilities, and

(b) the incorporated association has distributed all property and discharged all liabilities before it sends articles of dissolution to the Registrar pursuant to subsection (4).

(4) The incorporated association shall send articles of dissolution in the prescribed form to the Registrar.

(5) On receipt of articles of dissolution, the Registrar shall issue a certificate of dissolution.

(6) The incorporated association ceases to exist on the date shown in the certificate of dissolution.

**Proposal for dissolution**

**106**(1) The directors may propose, or a member who is entitled to vote at an annual meeting of members may, in accordance with section 55, make a proposal, for the voluntary liquidation and dissolution of an incorporated association.

(2) Notice of any meeting of members at which voluntary liquidation and dissolution is to be proposed shall set out the terms of the liquidation and dissolution.

(3) An incorporated association may liquidate and dissolve by special resolution of the members or, if the incorporated association has issued more than 1 class of memberships, by special resolution of the holders of each class, whetner or not they are otherwise entitled to vote.

(4) The incorporated association shall send a statement of intent to dissolve in the prescribed form to the Registrar.

(5) On receipt of a statement of intent to dissolve, the Registrar shall issue a certificate of intent to dissolve.

(6) On the issuance of a certificate of intent to dissolve, the incorporated association shall cease to carry on activities except to the extent necessary for the liquidation, but its corporate existence continues

until the Registrar issues a certificate of dissolution.

(7) After the issuance of a certificate of intent to dissolve, the incorporated association shall

(a) immediately cause notice of the issuance of the certificate to be sent or delivered to each known creditor of the incorporated association,

(b) forthwith publish notice of the issuance of the certificate

(i) in The Alberta Gazette, and

(ii) once in a newspaper published or distributed in the place where the incorporated association has its registered office,

and take reasonable steps to give notice of the issuance of the certificate in every jurisdiction where the incorporated association was carrying on activities at the time it sent the statement of intent to dissolve to the Registrar,

(c) proceed to collect, its property, to dispose of property that is not to be distributed in kind to its members, to discharge all its obligations and to do all other acts required to liquidate its activities, and

(d) after giving the notice required under clauses (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind in accordance with Part 4.

(8) The Registrar or any interested person may, at any time during the liquidation of an incorporated association, apply to the Court for an order that the liquidation be continued under the supervision of the Court as provided in this Part, and on the application the Court may so order and make any further order it thinks fit.

(9) An applicant under subsection (8) shall give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by counsel.

(10) An application under subsection (8) shall state the reasons, verified by an affidavit of the applicant, why the Court should supervise the liquidation and dissolution.

(11) If the Court makes an order applied for under subsection (8), the liquidation and dissolution of the

incorporated association shall continue under the supervision of the Court in accordance with this Act.

(12) At any time after the issue of a certificate of intent to dissolve and before the issue of a certificate of dissolution, the incorporated association may revoke the certificate of intent to dissolve

(a) by sending to the Registrar a statement of revocation of intent to dissolve in the prescribed form and approved in the same manner as the resolution under subsection (3), and

(b) by publishing the statement in The Alberta Gazette.

(13) On receipt of a statement of revocation of intent to dissolve, the Registrar shall issue a certificate of revocation of intent to dissolve.

(14) The revocation is effective on the date shown in the certificate of revocation of intent to dissolve and the incorporated association may continue to carry on its activities.

(15) If a certificate of intent to dissolve has not been revoked and the incorporated association has complied with subsection (7), the incorporated association shall prepare articles of dissolution in the prescribed form and send them to the Registrar.

(16) On receipt of articles of dissolution, the Registrar shall issue a certificate of dissolution.

(17) The incorporated association ceases to exist on the date shown in the certificate of dissolution.

**Dissolution by Registrar**

107(1) If an incorporated association

(a) has not commenced carrying on activities within 3 years after the date shown in its certificate of incorporation,

(b) has not carried on its activities for 3 consecutive years, or

(c) is in default for a period of 1 year in sending to the Registrar any notice or document required by this Act,

the Registrar may

(d) dissolve the incorporated association by issuing a certificate of dissolution under this section, or

(e) apply to the Court for an order dissolving the incorporated association.

(2) The 3-year period referred to in subsection (1)(a) and (b) includes time elapsed prior to the coming into force of this Act in the case of an incorporated association referred to in section 9.

(3) The Registrar shall not dissolve an incorporated association under this section until he has

(a) given 120 days notice of his decision to dissolve the incorporated association to the incorporated association and to each director of the incorporated association shown on the last notice of directors filed with him under this Act, the Companies Act or the Societies Act, as the case may be, and

(b) published notice of his decision to dissolve the incorporated association in The Alberta Gazette.

(4) Unless cause to the contrary has been shown or an order has been made by the Court under section 132, the Registrar may, after expiry of the period referred to in subsection (3), issue a certificate of dissolution.

(5) The incorporated association ceases to exist on the date shown in the certificate of dissolution.

**Dissolution by Court order**

108(1) The Registrar or any interested person may apply to the Court for an order dissolving an incorporated association if the incorporated association has

(a) failed for 2 or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of members,

(b) contravened section 16(3), 28 or 65, or

(c) procured any certificate under this Act by misrepresentation.

(2) An applicant under this section, other than the Registrar, shall give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by counsel.

**Dissolution by Court order - other grounds**

109(1) The Court may on the application of a member order the liquidation and dissolution of an incorporated association or any of its affiliated

incorporated associations

(a) if the Court is satisfied that in respect of an incorporated association or any of its affiliates

(i) any act or omission of the incorporated association or any of its affiliates effects a result,

(ii) the affairs of the incorporated association or any of its affiliates are being or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the incorporated association or any of its affiliates are being or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any member, creditor, director or officer, or

(b) if the Court is satisfied that it is just and equitable that the incorporated association should be liquidated and dissolved.

(2) The Registrar may also apply under subsection (1) in the case of an incorporated association the articles of which contain a provision referred to in section 5(b).

(3) Section 127 applies to an application under this section.

(4) An application under this section shall state the reasons, verified by an affidavit of the applicant, why the incorporated association should be liquidated and dissolved.

(5) On an application under this section, the Court may make an order requiring the incorporated association and any person having an interest in the incorporated association or a claim against it to show cause, at a time and place specified in the order but not less than 4 weeks after the date of the order, why the incorporated association should not be liquidated and dissolved.

(6) A copy of an order made under subsection (5) shall be

(a) published as directed in the order, at least once in each week before the time appointed for the hearing, in a newspaper published or distributed in the place where the incorporated association has its registered office, and

(b) served on the Registrar and each person named in the order.

(7) On an application under this section, the Court may order the directors and officers of the incorporated association to furnish to the Court all material information known to or reasonably ascertainable by them, including

(a) financial statements of the incorporated association,

(b) the name and address of each member of the incorporated association, and

(c) the name and address of each creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the incorporated association has a contract.

(8) Publication and service of an order under this section shall be effected by the incorporated association or by any other person and in any manner the Court may order.

**Court order**

110 On an application under section 107 or 108, the Court may order that the incorporated association be dissolved or that the incorporated association be liquidated and dissolved under the supervision of the Court, and the Court may make any other order it thinks fit.

**Registrar's duty**

111(1) On receipt of an order under section 107, 108, 109 or 110, the Registrar shall

(a) if the order is to dissolve the incorporated association, issue a certificate of dissolution in the prescribed form, or

(b) if the order is to liquidate and dissolve the incorporated association under the supervision of the Court, issue a certificate of intent to dissolve in the prescribed form and publish notice of the order in The Alberta Gazette.

(2) The incorporated association ceases to exist on the date shown in the certificate of dissolution.

**Powers of Court**

112 The Court may make any order it thinks fit in connection with the dissolution or the liquidation and dissolution of an incorporated association, including,

without limitation, any 1 or more of the following:

(a) an order to liquidate;

(b) an order appointing a liquidator, with or without security, and fixing his remuneration and an order replacing a liquidator;

(c) an order appointing inspectors or referees, specifying their powers and fixing their remuneration, and an order replacing inspectors or referees;

(d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(e) an order determining the validity of any claims made against the incorporated association;

(f) an order at any stage of the proceedings restraining the directors and officers from

(i) exercising any of their powers, or

(ii) collecting or receiving any debt or other property of the incorporated association, or from paying out or transferring any property of the incorporated association, except as permitted by the Court;

(g) an order determining and enforcing the duty or liability of any director, officer or member

(i) to the incorporated association, or

(ii) for an obligation of the incorporated association;

(h) an order approving the payment, satisfaction or compromise of claims against the incorporated association and the retention of assets for that purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the incorporated association, whether liquidated, unliquidated, future or contingent;

(i) an order disposing of or destroying the documents and records of the incorporated association;

(j) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;

(k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on any terms the Court thinks fit or confirming any act of the liquidator;

(l) subject to section 117, an order approving any proposed interim or final distribution in money or in property;

(m) an order disposing of any property belonging to creditors or members who cannot be found;

(n) on the application of any director, officer, member, creditor or the liquidator,

(i) an order staying the liquidation on any terms and conditions the Court thinks fit,

(ii) an order continuing or discontinuing the liquidation proceedings, or

(iii) an order to the liquidator to restore to the incorporated association all its remaining property;

(o) after the liquidator has rendered his final account to the Court, an order dissolving the incorporated association.

**Effect of Court order**

**113**(1) If the Court makes an order for the liquidation of an incorporated association, the liquidation commences when the order is made.

(2) If the Court makes an order for liquidation of an incorporated association,

(a) the incorporated association continues in existence, but shall cease to carry on its activities, except any activities which are, in the opinion of the liquidator, required for an orderly liquidation, and

(b) the powers of the directors and members cease and vest in the liquidator, except as specifically authorized by the Court.

(3) The liquidator may delegate any of the powers vested in him by subsection (2)(b) to the directors or members.

**Vacancy in office of liquidator**

**114** If an order for the liquidation of an incorporated association has been made and the office of liquidator is or becomes vacant, the property of the incorporated association is under the control of the

Court until the office of liquidator is filled.

**Duties of liquidator**

115 A liquidator shall comply with the following:

(a) forthwith after his appointment

(i) give notice of his appointment to the Registrar and to each claimant and creditor known to the liquidator, and

(ii) publish notice in The Alberta Gazette and once a week for 2 consecutive weeks in a newspaper published or distributed in the place where the incorporated association has its registered office and take reasonable steps to give notice in each province in Canada where the incorporated association carries on its activities, and the notice shall

(A) state the fact of his appointment,

(B) require any person who is indebted to the incorporated association to provide a statement of account respecting the indebtedness and to pay to the liquidator at the time and place specified any amount owing,

(C) require any person who possesses property of the incorporated association to deliver it to the liquidator at the time and place specified, and

(D) require any person who has a claim against the incorporated association, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 2 months after the first publication of the notice;

(b) take the property of the incorporated association into his custody and control;

(c) open and maintain a trust account for the money of the incorporated association;

(d) keep accounts of the money of the incorporated association received and paid out by him;

(e) maintain separate lists of the members, creditors and other persons having claims against the incorporated association;

(f) if at any time the liquidator determines that the incorporated association is unable to pay or adequately provide for the discharge of its obligations, apply to the Court for directions;

(g) deliver to the Court and to the Registrar, at least once in every 12-month period after his appointment or more often as the Court may require, financial statements of the incorporated association in the form required by section 63 or in any other form the liquidator thinks proper or as the Court may require;

(h) after his final accounts are approved by the Court, distribute any remaining property of the incorporated association in accordance with Part 4.

**Powers of liquidator**

116(1) A liquidator may

(a) retain professional advisers he considers necessary to assist and advise him,

(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the incorporated association,

(c) carry on the activities of the incorporated association as required for an orderly liquidation,

(d) sell property of the incorporated association publicly or privately,

(e) do all acts and execute any documents in the name and on behalf of the incorporated association,

(f) borrow money on the security of the property of the incorporated association,

(g) settle or compromise any claims by or against the incorporated association, and

(h) do all other things for the liquidation of the incorporated association and distribution of its property.

(2) A liquidator is not liable in respect of acts or omissions based on his reliance in good faith on

(a) financial statements of the incorporated association represented to him by an officer of the incorporated association or in a written report of the auditor of the incorporated

association to reflect fairly the financial condition of the incorporated association, or

(b) an opinion, a report or a statement of a professional adviser retained by the liquidator.

(3) If a liquidator has reason to believe that any person has in his possession or under his control, or has concealed, withheld or misappropriated any property of the incorporated association, he may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order and to be examined.

(4) If the examination referred to in subsection (3) discloses that a person has in his possession or under his control, or has concealed, withheld or misappropriated property of the incorporated association, the Court may order that person to restore it or pay compensation to the liquidator.

**Final accounts and discharge of liquidator**

117(1) A liquidator shall pay the costs of liquidation out of the property of the incorporated association and shall pay or make adequate provision for all claims against the incorporated association.

(2) Within 1 year after his appointment, and after paying or making adequate provision for all claims against the incorporated association, the liquidator shall apply to the Court

(a) for approval of his final accounts and for an order permitting him to distribute in money or in kind the remaining property of the incorporated association in accordance with Part 4, or

(b) for an extension of time, setting out the reasons for the extension.

(3) A liquidator shall give notice of his intention to make an application under subsection (2) to

(a) the Registrar,

(b) each inspector appointed under section 112,

(c) each member,

(d) each creditor known to him, and

(e) each person who provided a security or fidelity bond for the liquidator.

(4) If a liquidator fails to make the application required by subsection (2), a member or creditor of the incorporated association may apply to the Court for an

order for the liquidator to show cause why a final accounting and distribution should not be made.

(5) If the Court approves the final accounts rendered by a liquidator, the Court shall make an order

(a) directing the Registrar to issue a certificate of dissolution,

(b) directing the custody or disposal of the documents and records of the incorporated association, and

(c) discharging the liquidator.

(6) The liquidator shall forthwith send or deliver a certified copy of the order referred to in subsection (5) to the Registrar.

(7) On receipt of the order referred to in subsection (5), the Registrar shall issue a certificate of dissolution.

(8) The incorporated association ceases to exist on the date shown in the certificate of dissolution.

**Member's right to distribution in money**

118(1) If, in the course of liquidation of an incorporated association, the members resolve or the liquidator purposes to

(a) exchange all or substantially all the property of the incorporated association for securities of another body corporate that are to be distributed to the members, or

(b) distribute all or part of the property of the incorporated association to the members in kind,

a member may apply to the Court for an order requiring the distribution of the property of the incorporated association to be in money.

(2) On an application under subsection (1), the Court may order that

(a) all the property of the incorporated association be converted into and distributed in money, or

(b) the applicant be paid the fair value of his membership, in which case the Court

(i) may determine whether any other member is opposed to the proposal and if so, join that member as a party,

(ii) may appoint 1 or more appraisers to assist the Court in fixing the fair value of the membership,

(iii) shall fix the fair value of the membership of the applicant and the other members joined as parties as of a date determined by the Court,

(iv) shall give judgment in the amount of the fair value against the incorporated association and in favour of each of the members who are parties to the application, and

(v) shall fix the time within which the liquidator must pay the amount referred to in subclause (iv) to a member after delivery by the member of his indicia of membership, if it has not already been delivered to the Court or to the liquidator at the time the order is pronounced.

**Custody of documents, etc.**

**119**(1) A person who has been granted custody of the documents and records of a dissolved incorporated association remains liable to produce those documents and records for 6 years following the date of its dissolution or until the expiry of any shorter period that may be ordered under section 118(5).

(2) A person who, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable to a fine of not more than $5000 or to imprisonment for a term of not more than 6 months, or to both fine and imprisonment.

**Existing rights unaffected by dissolution**

**120**(1) In this section, "member" includes the legal representatives of a member.

(2) Notwithstanding the dissolution of a body corporate under this Act,

(a) a civil, criminal or administrative action or proceeding commenced by or against the body corporate before its dissolution may be continued as if the body corporate had not been dissolved,

(b) a civil, criminal or administrative action or proceeding may be brought against the body corporate within 2 years after its dissolution as if the body corporate had not been dissolved, and

(c) any property that would have been available to satisfy any judgment or order if the body

corporate had not been dissolved remains available for that purpose.

(3) Service of a document on an incorporated association after its dissolution may be effected by serving the document on a person shown in the most recent notice of directors filed under this Act.

(4) Notwithstanding the dissolution of a body corporate under this Act, a member to whom any of its property has been distributed in the liquidation is liable to any person claiming under subsection (2) to the extent of the amount received by that member on the distribution, and an action to enforce that liability may be brought within 2 years after the date of the dissolution of the body corporate.

(5) The Court may order an action referred to in subsection (4) to be brought against the persons who were members as a class, subject to any conditions the Court thinks fit and, if the plaintiff establishes his claim, the Court may refer the proceedings to a referee or other officer of the Court who may

(a) add as a party to the proceedings before him each person who the plaintiff establishes was a member of the class,

(b) determine, subject to subsection (4), the amount that each person who was a member shall contribute towards satisfaction to the plaintiff's claim, and

(c) direct payment of the amounts so determined.

**Unknown claimants**

121(1) On the dissolution of a body corporate under this Act, the portion of the property distributable to a creditor or member who cannot be found shall be converted into money and paid to the Provincial Treasurer.

(2) A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of the creditor or member.

(3) If at any time a person establishes that he is entitled to any money paid to the Provincial Treasurer under this Act, the Provincial Treasurer shall pay an equivalent amount to him out of the General Revenue Fund.

## PART 19

## REVIVAL

Notes to Part 19.

1. Under s. 122 the Registrar would have power to revive an incorporated association which had been dissolved under Part 18. Under s. 123, the Court would have power to revive a Companies Act not-for-profit company or a Societies Act society. It would have power to do whatever is necessary to make the revived entity fit into the current law.

2. A revived incorporated association, company or society would be treated as if it had not been dissolved at all, except for any intervening rights which might have arisen during the period of dissolution.

**Revival of incorporated association**

122(1) If an incorporated association is dissolved under Part 17, any interested person may apply to the Registrar to have the incorporated association revived.

(2) The applicant shall, unless the Registrar provides otherwise, send to the Registrar articles of revival in the prescribed form and documents relating to corporate names that are prescribed by the regulations.

(3) On receipt of articles of revival, the documents referred to in subsection (2) and the prescribed fees, the Registrar shall issue a certificate of revival.

(4) An incorporated association is revived on the date shown in the certificate of revival and, subject to any reasonable terms that the Registrar may impose and to rights acquired by any person prior to the revival, the incorporated association is deemed to have continued in existence as if it had not been dissolved.

**Revival of other bodies corporate**

123(1) Any interested person may apply to the Court for an order reviving

(a) a body corporate that was dissolved under the Companies Act and that was at the time of its dissolution a not-for-profit company as defined in section 261(1) of the Business Corporations Act,

(b) a body corporate that was dissolved under the Societies Act, or

(c) a body corporate that was dissolved by reason of the operation of subsection (7).

(2) An applicant under subsection (1) shall give notice of the application to the Registrar and the Registrar is entitled to appear and be heard in person or by counsel.

(3) An order under subsection (1) may revive the body corporate

(a) as an incorporated association, or

(b) for the purpose of carrying out particular acts specified in the order, in which event the order shall state that the revival remains in effect for a specific time limited by the order.

(4) In an order under subsection (1), the Court may

(a) give directions as to the holding of meetings of members, the appointment of directors and meetings of directors,

(b) specify any provisions of this Act that are not to apply to the body corporate during the period of its revival, or declare that any provisions of this Act are to apply to the body corporate with the variations prescribed in the order,

(c) change the name of the body corporate to a number designated or name approved by the Registrar, and

(d) give any other directions the Court thinks fit.

(5) Where a person seeks the approval of the Registrar under subsection (4)(c), he shall provide to the Registrar documents relating to corporate names that are prescribed by the regulations.

(6) Subject to subsection (4)(b), this Act applies to a body corporate revived under this section.

(7) A body corporate revived for a limited time by an order under this section is dissolved on the expiration of the time limited by the order.

(8) If an order is made under this section, the applicant shall forthwith send a certified copy to the Registrar together with the prescribed fee.

(9) The Registrar shall file an order sent to him under subsection (8), register the body corporate in the register and issue a certificate of revival with a copy of the order included or attached.

(10) A body corporate is revived on the making of an order under this section and, subject to the terms imposed by the order and to rights acquired by any person prior to the revival, the body corporate is deemed to have continued in existence as if it had not been dissolved.

## PART 20

## REMEDIES, OFFENCES AND PENALTIES

Notes to Part 20.

1. First, it should be noted that the draft Act would not confer the members' oppression remedy provided for in s. 234 of the Business Corporations Act, nor, except in the case of an incorporated association with share capital, would it confer the right to dissent and be paid out which is conferred by BCA s. 184.

2. S. 125(1) would give the Court power to allow a member, director or officer of an incorporated association or its affiliate, or any other proper person, to bring or defend any action on behalf of the incorporated association. This is the right to bring a "derivative action" which is the same as that provided for by BCA s. 232. The intervenant would not be able to discontinue his intervention without Court approval.

3. S. 129 would empower to Court to order the rectification of an incorporated association's registers, particularly the register of membership.

4. S. 130 would allow the Registrar to apply to the Court for directions as to what he should do.

5. S. 132 would allow anyone to appeal to the Court a number of significant decisions of the Registrar. In aid of this, s. 131 would require the Registrar to give a decision about filing a document within 20 days, failing which the right of appeal would arise.

6. S. 133 would empower the Court to order an incorporated association, a member, director, officer, employee, or a number of officials, to comply with the Act, the regulations, the articles or the by-laws.

Definitions

124 In this Part,

(a) "action" means an action under this Act or any other law;

(b) "complainant" means

(i) a member or former member of an incorporated association or any of its affiliates,

(ii) a director or an officer, or a former director or officer, of an incorporated

association or of any of its affiliates, or

(iii) any other person who, in the discretion of the Court, is a proper person to make an application under this Part.

**Derivative action**

125(1) Subject to subsection (2), a complainant may apply to the Court for leave to

(a) bring an action in the name and on behalf of an incorporated association or any of its subsidiaries, or

(b) intervene in an action to which an incorporated association or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the incorporated association or subsidiary.

(2) No leave may be granted under subsection (1) unless the Court is satisfied that

(a) the complainant has given reasonable notice to the directors of the incorporated association or its subsidiary of his intention to apply to the Court under subsection (1) if the directors of the incorporated association or subsidiary do not bring, diligently prosecute, defend or discontinue the action,

(b) the complainant is acting in good faith, and

(c) it appears to be in the interests of the incorporated association or its subsidiary that the action be brought, prosecuted, defended or discontinued.

[Recommendation 29]

**Powers of Court**

126 The Court may at any time in connection with an action brought or intervened in under section 125 make any order it thinks fit including, without limitation, any or all of the following orders:

(a) an order authorizing the complainant or any other person to control the conduct of the action;

(b) an order giving directions for the conduct of the action;

(c) an order directing that any amount adjudged payable by a defendant in the action shall be

paid, in whole or in part, directly to former and present members of the incorporated association or its subsidiary instead of to the incorporated association or its subsidiary;

(d) an order requiring the incorporated association or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

**Court approval of stay, etc.**

**127**(1) An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the incorporated association or its subsidiary has been or may be approved by the members of the incorporated association or the subsidiary, but evidence of approval by the members may be taken into account by the Court in making an order under section 126 or 127.

(2) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given on any terms the Court thinks fit and, if the Court determines that the interests of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

**Costs**

**128**(1) A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.

(2) In an application made or an action brought or intervened in under this Part, the Court may at any time order the incorporated association or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for the interim costs on final disposition of the application or action.

**Rectification of records**

**129**(1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of an incorporated association, the incorporated association, a member of the incorporated association or any aggrieved person may apply to the Court for an order that the registers or records be rectified.

(2) On an application under this section, the Court may make any order it thinks fit including, without limitation, any or all of the following orders:

(a) an order requiring the registers or records of the incorporated association to be rectified;

(b) an order restraining the incorporated association from calling or holding a meeting of members;

(c) an order determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from, the registers or records of the incorporated association;

(d) an order compensating a party who has incurred a loss.

**Court order for directions**

130 The Registrar may apply to the Court for directions in respect of any matter concerning his duties under this Act, and on the application the Court may give any directions and make any further order as it thinks fit.

**Registrar's refusal to file**

131(1) If the Registrar refuses to file any articles or other documents required by this Act to be filed by him before the articles or other document become effective, he shall, within 20 days after he receives

(a) the articles or document, or

(b) any approval that may be required under any other Act,

whichever is later, give written notice of his refusal to the person who sent the articles or document, together with reasons.

(2) If the Registrar does not file, or give written notice of his refusal to file, any articles or documents within the time limited in subsection (1), he is deemed for the purposes of section 132 to have refused to file the articles or documents.

**Appeal from Registrar's decision**

132(1) A person who feels aggrieved by a decision of the Registrar

(a) to refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him,

(b) to approve, change or revoke a name, or to refuse to approve, change or revoke a name, under this Act,

(c) to refuse to revive an incorporated association under Part 19,

(d) to dissolve an incorporated association under section 107,

(e) to refuse an exemption under section 156, or

(f) to cancel the registration of an extra-provincial incorporated association under section 162

may apply to the Court for an order requiring the Registrar to change his decision, and on the application the Court may so order and make any further order it thinks fit.

**Compliance or restraining order**

**133** If an incorporated association or any member, director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of an incorporated association contravenes this Act, the regulations, the articles or the by-laws, a complainant or a creditor of the incorporated association may, in addition to any other right he has, apply to the Court for an order directing that person to comply with, or restraining that person from contravening the relevant provision, and on the application the Court may so order and make any further order it thinks fit.

[Recommendation 30]

**Offence re: returns, etc.**

**134**(1) A person who makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the Registrar that

(a) contains an untrue statement of a material fact, or

(b) omits to state a material fact that is required in it or is necessary in order to make a statement contained in it not misleading in the light of the circumstances in which it was made,

is guilty of an offence and liable to a fine of not more than $5000 or to imprisonment for a term of not more than 6 months, or to both fine and imprisonment.

(2) If a body corporate contravenes subsection (1),

then whether or not the body corporate has been prosecuted or convicted in respect of the contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the contravention is guilty of an offence and liable to a fine of not more than $5000 or to imprisonment for a term of not more than 6 months, or to both fine and imprisonment.

(3) No person is guilty of an offence under subsection (1) or (2) if the untrue statement or omission was unknown to him and in the exercise of reasonable diligence could not have been known to him.

**General penalty**

135 Every person who, without reasonable cause, contravenes this Act or the regulations for which no penalty is provided is guilty of an offence and liable to

(a) in the case of a body corporate, a fine of not more than $1000, and

(b) in the case of an individual, a fine of not more than $1000 or to imprisonment for a term of not more than 1 month, or to both fine and imprisonment.

**Order for compliance**

136 If a person is found guilty of an offence under this Act or the regulations, the court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or the regulations that he contravened.

**Appeal from conviction**

137 An appeal lies from an order of the Provincial Court of Alberta under section 136 to the Court of Queen's Bench.

**Limitation period**

138 A prosecution for an offence under this Act may be instituted at any time within 2 years after the time when the subject matter of the offence arose, but not thereafter.

**Civil remedy unaffected**

139 No civil remedy for an act or omission is suspended or affected by reason that an act or omission is an offence under this Act.

## PART 21

## GENERAL

**Service on members, directors**

**140**(1) A notice or document required or permitted by this Act, the regulations, the articles or the by-laws to be sent to or served on a member or director of an incorporated association may be delivered personally to the member or director or may be sent by mail addressed to

(a) the member at his latest address as shown in the records of the incorporated association, or

(b) the director at his latest address as shown in the records of the incorporated association or in the most recent notice of directors filed under this Act.

(2) For the purpose of the service of a notice or document, a director named in a notice of directors sent by an incorporated association to the Registrar under this Act and filed by the Registrar is presumed to be a director of the incorporated association.

(3) A notice or document sent by mail in accordance with subsection (1) to a member or director is deemed to be received by him at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the member or director did not receive the notice or document at the time or at all.

(4) If an incorporated association attempts to send a notice or document to a member in accordance with subsection (1) and the notice or document is returned on 3 consecutive occasions because the member cannot be found, the incorporated association is not required to send any further notices or documents to the member until he informs the incorporated association in writing of his new address.

**Service on incorporated association**

**141**(1) A notice or document required or permitted to be sent to or served on an incorporated association may be

(a) delivered to its registered office, or

(b) sent by mail to

(i) its registered office, or

(ii) the post office box designated as its address for service by mail,

as shown in the most recent notice of registered office or notice of designated post office box, as the case may be, filed under this Act.

(2) A notice or document sent by registered mail to an incorporated association in accordance with subsection (1)(b) is deemed to be received or served at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the incorporated association did not receive the notice or document at that time or at all.

**Service on Registrar**

**142** A notice or document may be sent to or served on the Registrar by leaving it at an office of the Registrar or by mailing it by registered mail addressed to the Registrar at an office of the Registrar, and if sent by registered mail is deemed to be received or served at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the Registrar did not receive the notice or document at that time or at all.

**Waiver of notice**

**143** The person entitled to receive a notice or document required by this Act or the regulations to be sent or served may, in writing, waive the sending or service of the document or abridge the time within which the notice or document must be sent or served.

**Registrar's certificate**

**144**(1) When this Act requires or authorizes the Registrar to issue a certificate or to certify any fact, the certificate shall be signed by the Registrar or by an individual authorized by the Registrar.

(2) Except in a proceeding under section 108 to dissolve an incorporated association, a certificate referred to in subsection (1) or a certified copy of it, when introduced as evidence in any civil, criminal or administrative action or proceeding, is conclusive proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

**Certificate by incorporated association**

**145**(1) A certificate issued on behalf of an incorporated association stating any fact that is set out in the articles, the by-laws, the minutes of the meetings of the directors, a committee of directors or the members, or in a trust indenture or other contract

to which the incorporated association is a party, may be signed by a director or an officer of the incorporated association.

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,

(a) a fact stated in a certificate referred to in subsection (1),

(b) a certified extract from a register of members of an incorporated association, or

(c) a certified copy of minutes or of an extract from minutes of a meeting of members, directors or a committee or directors of an incorporated association,

is, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

(3) In the case of an incorporated association with a capital stock divided into shares

(a) an entry in a securities register kept by the incorporated association, and

(b) a security certificate issued by the incorporated association

by virtue of section 33(b) are, in the absence of evidence to the contrary, proof that the person in whose name the security is registered is the owner of the security described in the register or certificate.

(4) In the case of an incorporated association other than one referred to in subsection (1), a certificate purporting to be signed by a person responsible for maintaining the register of members and stating that a named person was or was not a member of the incorporated association on a specified day or during a specified period is, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

**Copies of documents**

**146** If a notice or document is required to be sent to the Registrar under this Act, the Registrar may accept a photostated or photographic copy of the notice or document.

**Proof required by Registrar**

**147** The Registrar may require that a document or a

fact stated in a document required by this Act or the regulations to be sent to him shall be verified under oath or by statutory declaration.

**Registrar's power to issue certificates**

**148**(1) In this section, "statement" means a statement of intent to dissolve and a statement of revocation of intent to dissolve referred to in section 106.

(2) When this Act requires articles or a statement relating to an incorporated association to be sent to the Registrar then, unless otherwise specifically provided,

(a) the articles or statement shall be signed by a director or an officer of the incorporated association or, in the case of articles of incorporation, by an incorporator, and

(b) on receiving articles or a statement that conforms to law, together with any other required documents and the prescribed fees, the Registrar shall

(i) endorse on the articles or statement the word "Filed" and the date of the filing,

(ii) issue the appropriate certificate and attach the articles or statement to the certificate,

(iii) enter the information from the certificate and attached articles or statement in his records, and

(iv) send to the incorporated association or its representative the certificate and attached articles or statement.

(3) A certificate referred to in subsection (2) issued by the Registrar may be dated as of the day he receives the articles, statement or Court order pursuant to which the certificate is issued or as of any later day specified by the Court or person who signed the articles or statement.

(4) A signature required on a certificate referred to in subsection (2) or section 145 may be printed or otherwise mechanically reproduced on the certificate.

**Certificate of status**

**149**(1) The Registrar may furnish any person with a certificate that an incorporated association has filed with the Registrar a document required to be sent to him under this Act.

(2) On the payment of the prescribed fee, the Registrar may issue a certificate stating that, according to his records, the body corporate named in the certificate

(a) is or is not an existing incorporated association on the date of issue of the certificate, or

(b) was or was not an existing incorporated association on the day or during the period specified in the certificate.

**Registrar may alter documents**

150 The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorized by the person who sent the document or by his representative.

**Errors in certificates**

151(1) If a certificate containing an error is issued to an incorporated association by the Registrar, the directors or members of the incorporated association shall, on the request of the Registrar, pass the resolutions and send to him the documents required to comply with this Act, and take any other steps the Registrar may reasonably require, and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) shall bear the date of the certificate it replaces.

(3) The issue of a corrected certificate under this section does not affect the rights of a person who acts in good faith and for value in reliance on the certificate containing the error.

**Examination of documents**

152(1) A person who pays the prescribed fee is entitled during usual business hours to examine a document required by this Act or the regulations to be sent to the Registrar, and to make copies of or extracts from that document.

(2) The Registrar shall furnish any person who pays the prescribed fee with a copy or a certified copy of a document required by this Act or the regulations to be sent to the Registrar.

**Registrar's records**

153(1) Records required by this Act to be prepared and maintained by the Registrar may be in bound or looseleaf form or in a photographic film form, or may

be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

(2) The records referred to in subsection (1) shall be kept in accordance with the regulations.

(3) If records maintained by the Registrar are prepared and maintained other than in written form,

(a) the Registrar shall furnish any copy required to be furnished under section 152(2) in legible written form, and

(b) a reproduction of the text of those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would have been.

**Regulations**

154(1) The Lieutenant Governor in Council may make regulations

(a) prescribing, subject to subsection (2), any matter required or authorized by this Act to be prescribed;

(b) requiring the payment of a fee in respect of the filing, examination or copying of any document, or in respect of any action that the Registrar is required or authorized to take under this Act, and prescribing the amount of the fee;

(c) prescribing rules with respect to exemptions permitted by this Act;

(d) respecting

(i) the form in which and the period of time for which records referred to in section 149 are to be kept, and

(ii) the disposal of records referred to in section 153(1);

(e) declaring that, for the purposes of Part 13, the standards as they exist from time to time, of any accounting body named in the regulations shall be in force in Alberta, in whole or in part or with any revisions, variations or modifications that are specified by the regulations;

(f) defining the words "solicited money from the public" as used in this Act.

(g) respecting names of incorporated associations and extra-provincial incorporated associations;

(h) prohibiting the use of any names or any words or expressions in a name;

(i) defining any word or expression used in sections 12(9)(c) and (d) and 159(1)(c) and (d);

(j) respecting the circumstances and conditions under which a name under section 12(9) or 159(1) may be used;

(k) prescribing the punctuation marks and other marks that may form part of a name.

(2) The Minister may make regulations

(a) prescribing the form and content of financial statements for the purposes of section 63;

(b) prescribing the form and content of annual returns, notices and other documents required to be sent to the Registrar or to be issued by him.

# PART 22

## EXTRA-PROVINCIAL NON-PROFIT CORPORATIONS

Notes to Part 22.

1. This Part would replace BCA Part 21 for the registration of extra-provincial non-profit corporations. In general, it follows BCA Part 21, with necessary changes.

2. S. 157(3) would cancel exemptions from registration which, under the Companies Act, were granted to a number of extra-provincial non-profit corporations.

Interpretation

155(1) In this Part,

(a) "anniversary month", with reference to an extra-provincial non-profit corporation, means the month in each year that is the same as the month in which its certificate of registration was issued;

(b) "Canada non-profit corporation" means a non-profit corporation that is incorporated by or under an Act of the Parliament of Canada.

(c) "charter includes

(i) a statute, ordinance or other law incorporating an extra-provincial corporation, as amended from time to time,

(ii) letters patent of incorporation and any letters patent supplementary to them,

(iii) a memorandum of association, as amended from time to time,

(iv) any other instrument of incorporation, as amended from time to time, and

(v) any certificate, licence or other instrument evidencing incorporation.

(2) An extra-provincial non-profit corporation carries on non-profit activities in Alberta if

(a) its name, or any name under which it carries on activities, is listed in a telephone directory for any part of Alberta,

(b) its name, or any name under which it carries on activities, appears or is announced in any advertisement in which an address in Alberta is given for the extra-provincial non-profit corporation,

(c) it has in Alberta a resident agent or representative who carries on its activities or an office or a place from which it carries on its activities, or

(d) it owns any estate or interest in land in Alberta.

**Exemption from fees**

**156** The Registrar may exempt an extra-provincial non-profit corporation from the payment of fees under this Part.

## Division 1

## Registration

**Duty to register**

**157**(1) Every extra-provincial non-profit corporation shall be registered under this Part before or within 30 days after it commences carrying on activities in Alberta.

(2) An extra-provincial non-profit corporation that at the date this Act comes into force, is registered under Part 21 of the Business Corporations Act is registered under this Part.

(3) An extra-provincial non-profit corporation that

(a) was, prior to the coming into force of this Act, exempted from all or any of the provisions of the Business Corporations Act or the Companies Act, and

(b) is carrying on its activities in Alberta on the date this Act comes into force,

shall be registered under this Part within

(c) 1 year after the coming into force of this Act, or

(d) 6 months after receipt of a notice under subsection (4),

whichever is later.

(4) The Registrar may give a notice in writing to an extra-provincial non-profit corporation referred to in subsection (3) advising it that it must register under this Part.

[Recommendation 33]

**Application for registration**

158(1) An extra-provincial non-profit corporation shall apply for registration by sending to the Registrar a statement in the prescribed form.

(2) The statement shall be accompanied by

(a) a copy of the charter of the extra-provincial non-profit corporation verified in a manner satisfactory to the Registrar,

(b) documents relating to corporate names that are prescribed by the regulations, and

(c) the appointment of its attorney for service, in the prescribed form.

(3) If all or any part of the charter is not in the English language, the Registrar may require the submission to him of a translation of the charter or that part of the charter, verified in a manner satisfactory to him, before he registers the extra-provincial non-profit corporation.

**Name requirements**

159(1) Subject to the circumstances and conditions prescribed by the regulations, an extra-provincial non-profit corporation shall not be registered with a name or carry on activities in Alberta under an assumed name

(a) that is prohibited by the regulations or contains a word or expression that is prohibited by the regulations,

(b) that is identical to the name of

(i) a body corporate incorporated under the laws of Alberta, whether in existence or not,

(ii) an extra-provincial corporation registered in Alberta, or

(iii) a corporation incorporated by or under an Act of the Parliament of Canada,

(c) that is similar to the name of

(i) a body corporate incorporated under the laws of Alberta,

(ii) an extra-provincial corporation registered in Alberta, or

(iii) a corporation incorporated by or under an Act of the Parliament of Canada,

if the use of that name is confusing or misleading,

(d) that is identical or similar to the name of an unincorporated association if the use of that name is confusing or misleading, or

(e) that does not meet the requirements prescribed by the regulations.

(2) If through inadvertence or otherwise an extra-provincial non-profit corporation is registered with or later acquires a name that contravenes subsection (1), the Registrar may, by notice in writing giving his reasons, direct the extra-provincial non-profit corporation to change its name to one that he approves within 90 days after the date of the notice.

(3) The Registrar may give a notice under subsection (2) on his own initiative or at the request of a person who feels aggrieved by the name that contravenes subsection (1).

**Use of assumed name**

**160**(1) Notwithstanding section 159, an extra-provincial non-profit corporation the name of which contravenes section 159 may, with approval of the Registrar,

(a) be registered with its own name, and

(b) carry on activities in Alberta under an assumed name the use of which is approved by the Registrar and which does not contravene section 159.

(2) An extra-provincial non-profit corporation to which subsection (1) applies

(a) shall acquire all property and rights in Alberta under its assumed name, and

(b) is entitled to all property and rights acquired and is subject to all obligations and liabilities incurred under its assumed name as if they had been acquired and incurred under its own name.

(3) An extra-provincial non-profit corporation to which subsection (1) applies may sue or be sued in its own name or its assumed name, or both of them.

(4) An extra-provincial non-profit corporation to which subsection (1) applies may, with the approval of the Registrar and on application in the prescribed form and payment of the prescribed fee, cancel its assumed name and carry on activities in Alberta under the name in which it was registered.

**Registration**

161(1) Subject to section 159, on receipt of the statement and other documents required by section 158 and of the prescribed fees, the Registrar shall

(a) file the statement and documents,

(b) register the extra-provincial non-profit corporation, and

(c) issue a certificate of registration in the prescribed form.

(2) A certificate of registration issued under this section is conclusive proof for the purposes of this Act and for all other purposes that the provisions of this Act in respect of registration of the extra-provincial non-profit corporation and all requirements precedent and incidental to registration have been complied with, and that the extra-provincial non-profit corporation has been registered under this Part as of the date shown in the certificate of registration.

**Cancellation of registration**

162(1) Subject to subsection (2), the Registrar may cancel the registration of an extra-provincial non-profit corporation if the corporation

(a) is in default for a period of 1 year in sending to the Registrar any fee, notice, statement, return or document required by this Part,

(b) sends a notice to the Registrar under subsection (4), or the Registrar has reasonable grounds to believe that the extra-provincial non-profit corporation has ceased to carry on activities in Alberta,

(c) is dissolved,

(d) does not carry out an undertaking given in accordance with the regulations,

(e) does not comply with a direction of the Registrar under section 159(2), or

(f) otherwise contravenes this Part.

(2) The Registrar shall not cancel the registration of an extra-provincial non-profit corporation under subsection (1) until

(a) he has given at least 120 days' notice of the proposed cancellation, together with his reasons,

(i) to the extra-provincial non-profit corporation by mail addressed to its head office, and

(ii) to its attorney for service in accordance with section 158(2) or 165

(b) he has published a notice of the proposed cancellation in The Alberta Gazette, and

(c) no appeal is commenced under section 132 or, if an appeal has been commenced, it has been discontinued or the Registrar's decision is confirmed on the appeal.

(3) The Registrar may reinstate the registration of an extra-provincial non-profit corporation that was cancelled under subsection (1)(a) on the receipt by the Registrar of the fee, notice, statement, return or document required to be sent to him and of the prescribed reinstatement fee.

(4) An extra-provincial non-profit corporation that ceases to carry on activities in Alberta shall send a notice to that effect to the Registrar.

**Reinstatement of registration**

**163**(1) Subject to section 159, on the reinstatement of the registration of an extra-provincial non-profit corporation pursuant to section 162(3), the Registrar shall issue a new certificate of registration in the prescribed form.

(2) The cancellation of the registration of an extra-provincial non-profit corporation does not affect its liability for its obligations.

**Division 2**

**Information**

**Use of name**

164 An extra-provincial non-profit corporation shall set out its name in legible characters in or on all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the extra-provincial non-profit corporation in the course of carrying on activities in Alberta.

**Rules re: attorney for service**

165(1) If an attorney of an extra-provincial non-profit corporation dies or resigns or his appointment is revoked, the extra-provincial non-profit corporation shall forthwith send to the Registrar an appointment in the prescribed form of an individual as its attorney for service, and the Registrar shall file the appointment.

(2) An extra-provincial non-profit corporation may, in the prescribed form, appoint an individual as its alternative attorney if

(a) that individual is a member of a partnership of which the attorney is also a member, or

(b) that individual is an assistant manager of the extra-provincial non-profit corporation and the attorney is the manager for Alberta of the extra-provincial non-profit corporation.

(3) An extra-provincial non-profit corporation shall send to the Registrar

(a) each appointment by it of an alternative attorney, and

(b) if the alternative attorney dies or resigns or his appointment is revoked, a notice to that effect,

and the Registrar shall file the appointment or notice, as the case may be.

(4) An attorney for an extra-provincial non-profit corporation who intends to resign shall

(a) give not less than 60 days' notice to the extra-provincial non-profit corporation at its head office, and

(b) send a copy of the notice to the Registrar, who shall file it.

(5) An attorney shall forthwith send the Registrar a notice in the prescribed form of any change of the attorney's address, and the Registrar shall file the notice.

(6) An extra-provincial non-profit corporation shall

ensure that the address of its attorney is an office that is

(a) accessible to the public during normal business hours, and

(b) readily identifiable from the address or other description given in the notice referred to in subsection (5) or the appointment referred to in section 158(2)(c).

(7) A notice or document required or permitted by law to be sent or served in Alberta to or on an extra-provincial non-profit corporation may be

(a) delivered to its attorney or alternative attorney according to the Registrar's records, or

(b) delivered or sent by registered mail to the address, according to the Registrar's records, of its attorney.

(8) A notice or document sent by registered mail to the attorney's address in accordance with subsection (7)(b) shall be deemed to be received or served at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the attorney did not receive the notice or document at that time or at all.

(9) An individual whose appointment as an attorney or alternative attorney of an extra-provincial non-profit corporation is filed with the Registrar under the Companies Act or the Business Corporations Act on the coming into force of this Act is deemed to be its attorney or alternative attorney, as the case may be, for the purposes of this Act.

**Notice of changes**

166(1) A registered extra-provincial non-profit corporation shall send to the Registrar

(a) a copy of each amendment to its charter within 1 month after the effective date of the amendment, verified in a manner satisfactory to the Registrar,

(b) if the amendment to the charter effects a change in the name under which the extra-provincial non-profit corporation is registered, documents relating to corporate names that are prescribed by the regulations, and

(c) a notice in the prescribed form of any change in

(i) the address of its head office in or

outside Alberta, or

(ii) the membership of its board of directors, board of management or other governing body,

within 1 month after the effective date of the change,

and the Registrar shall file the copy or the notice, as the case may be.

(2) A notice sent to the Registrar pursuant to subsection (1)(c)(ii) shall contain the address and occupation of each new member of the board of directors or governing body.

(3) An extra-provincial non-profit corporation is not required to send a notice under subsection (1)(c) if

(a) the effective date of the change occurs in its anniversary month or the month following, and

(b) the change is reflected in the annual return required to be filed under section 169(1).

(4) If the amendment to its charter effects a change in the name under which the extra-provincial non-profit corporation is registered, the Registrar, on filing the copy of the amendment under subsection (1)(a), shall issue a certificate of amendment of registration in the prescribed form and change his records accordingly.

**Notice of amalgamation**

**167**(1) A registered extra-provincial non-profit corporation shall send to the Registrar

(a) a copy of any instrument effecting an amalgamation of the extra-provincial non-profit corporation with 1 or more other extra-provincial non-profit corporations,

(b) a copy of the amalgamation agreement, if any, and

(c) a statement in the prescribed form relating to the amalgamated extra-provincial non-profit corporation and the documents referred to in section 158(2),

within 1 month after the effective date of the amalgamation.

(2) On receiving the documents referred to in subsection (1), the Registrar shall file them and issue a new certificate of registration of the amalgamated extra-provincial non-profit corporation.

**Notices re: liquidation**

**168**(1) If liquidation proceedings are commenced in respect of a registered extra-provincial non-profit corporation, the extra-provincial non-profit corporation, or, if a liquidator is appointed, the liquidator,

(a) shall send to the Registrar forthwith after the commencement of those proceedings a notice showing that the proceedings have commenced and the address of the liquidator, if one is appointed, and

(b) shall send to the Registrar forthwith after the completion of those proceedings, a return relating to the liquidation.

(2) The Registrar shall

(a) on receiving a notice under subsection (1)(a), file it and publish a notice respecting the liquidation in The Alberta Gazette, and

(b) on receiving a return under subsection (1)(b), file it and cancel the registration of the extra-provincial non-profit corporation forthwith after the expiration of 3 months following the date of filing of the return.

(3) The liquidator of a registered extra-provincial non-profit corporation shall send to the Registrar a notice of any change in his address within 1 month after the effective date of the change, and the Registrar shall file the notice.

**Annual return**

**169**(1) A registered extra-provincial non-profit corporation shall, in each year on or before the last day of the month immediately following its anniversary month, send to the Registrar a return in the prescribed form, and the Registrar shall file it.

(2) Where a registered extra-provincial non-profit corporation has, in a year to which a return referred to under subsection (1) relates,

(a) solicited money from the public, or

(b) received a grant or similar financial assistance from a Canadian municipal, provincial or federal government or from an agency of a Canadian municipal, provincial or federal government

the return shall be accompanied by financial statements in the prescribed form in respect of that year.

## Division 3

## General

**Registrar's certificate**

**170**(1) The Registrar may furnish any person with a certificate that an extra-provincial non-profit corporation has sent to the Registrar a document required to be sent to him under this Act.

(2) A certificate purporting to be signed by the Registrar and stating that a named extra-provincial non-profit corporation was or was not registered on a specified day or during a specified period, is admissible in evidence as prima facie proof of the facts stated in it without proof of the Registrar's appointment or signature.

**Validity of acts**

**171** No act of an extra-provincial non-profit corporation, including any transfer of property to or by an extra-provincial non-profit corporation, is invalid by reason only

(a) that the act or transfer is contrary to or not authorized by its charter or internal regulations or any law of the jurisdiction in which it is incorporated, or

(b) that the extra-provincial non-profit corporation was not then registered.

**Effect of non-registration**

**172**(1) An extra-provincial non-profit corporation is, while unregistered, not capable of commencing or maintaining any action or other proceeding in any court in Alberta in respect of any contract made in the course of carrying on activities in Alberta while it was unregistered.

(2) If an extra-provincial non-profit corporation is not registered at the time it commences an action or proceeding referred to in subsection (1) but becomes registered afterward, the action or proceeding may be maintained as if it had been registered before the commencement of the action or proceeding.

**Offence**

**173** A person who contravenes this Part is guilty of an offence and liable to a fine of not more than $5000.

## PART 23

## CONSEQUENTIAL AND COMMENCEMENT

**Amends RSA 1980 c. C-20**

174 The Companies Act is amended

(a) by deleting from section 2.1 the words "except under Part 9", and

(b) by repealing Part 9.

**Amends SA 1981, c. B-15**

175 The Business Corporations Act is amended by adding the following after section 265(1)(a):

(a.1) an extra-provincial non-profit corporation required to be registered under the Incorporated Association Act,

**Repeals RSA 1980 c. S-18**

176 The Societies Act is repealed.

**Coming into force**

177 This Act comes into force on Proclamation.

# APPENDIX A

## MEMORANDUM

## ANTI-DISCRIMINATION LEGISLATION

1. Purpose of memorandum

This memorandum will address the following questions:

(a) whether section 40 of the Judicature Act, RSA 1980 c. J-1, requires a society incorporated under the Societies Act, or any non-profit corporation, to admit married and unmarried members of both sexes, and

(b) whether the proposed Incorporated Associations Act should prohibit incorporated associations from discriminating in the admission of members on the grounds of sex, marriage or any other grounds.

2. Effect of Judicature Act section 40

A. Terms

Section 40 of the Judicature Act reads as follows:

> 40 A person shall not be disqualified by sex or marriage
>
> (a) from the exercise of a public function,
>
> (b) from being appointed to or holding a civil or judicial office or post,
>
> (c) from entering or assuming or carrying on a civil profession or vocation, or
>
> (d) for admission to an incorporated society.

Before considering whether section 40 requires a non-profit society or corporation to admit married and unmarried members of both sexes, we will outline some of the legislative history of the section.

B. History

(1) Alberta

The predecessor of Section 40 was first enacted in Alberta as the Sex Disqualification (Removal) Act, 1930, which read as follows:

> 1. This Act may be cited as "The Sex Disqualification (Removal) Act, 1930."
>
> 2.--(1) A person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society.
>
> (2) The provisions of this Act shall have effect as from the first day of September, one thousand, nine hundred and five.

The provision was carried through from one revision of the Alberta statutes to another until 1980, when it was transferred to the Judicature Act.

(2) The United Kingdom

In 1919, the United Kingdom enacted the Sex Disqualification (Removal) Act, the relevant part of which is as follows:

> 1. A person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society (whether incorporated by Royal Charter or otherwise), ....

The 1930 Alberta statute reproduced verbatim that part of section 1 of the United Kingdom statute, except the part in brackets. It may be inferred from this that it was copied from the United Kingdom statute directly or indirectly. We think that an examination of the debates on the United Kingdom bill is instructive.

In 1919 and preceding years, there had been a great deal of controversy over the rights of women. This had resulted in the franchise being opened to them. It had also resulted in acute feeling about the disabilities which the common law imposed upon women in general and upon married women in particular. The 1919 Act was the United Kingdom government's response to that feeling.

The bill which became the Act was adopted first by the House of Lords. Lord Birkenhead, the Lord Chancellor, piloted the bill through the Lords. He gave the purpose of the bill as being "to remove such obstacles as prevent the appointment of women to public offices and the fulfillment by them of public functions". At its inception, therefore, there was no suggestion that the Act was to affect private activities in any way, and, indeed, the bill, when it was introduced, did not contain the reference to "any incorporated society" which appears in section 1.

Nor was the reference to "any incorporated society" in the bill when the Lords gave it second reading. Lord Birkenhead introduced it in committee as a government amendment. His explanation was that it was "to put down a point which had been taken by certain persons interested in this question in Edinburgh". The point which had been taken was "that the words of the Bill would not ensure the admission of women to certain

incorporated professional societies, such as the Faculty of Actuaries and the Society of Accountants in Edinburgh. "The words", Lord Birkenhead said, "will, of course, allow the admission of women to similar English societies". It is clear from this that the intention of Lord Birkenhead, which for this purpose was the intention of the House of Lords, in proposing the amendment, was merely to perfect the removal of the disqualification of women from carrying on some professions and vocations, and that he meant the words "any incorporated society" to refer to incorporated societies of the professions.

The Commons took a slightly different view of the reference to "incorporated societies". This was apparent in the discussion of an amendment which was to the effect that if an "incorporated society" in receipt of government assistance "disregards" the statute, the government would have a discretion to withhold the assistance until the society comes into compliance by admitting duly qualified women. The mover of the amendment referred to "Royal societies", and the assumption which pervaded the debate on the amendment was that "incorporated societies" meant learned societies, particularly Royal societies. "The members of these learned societies", said the Solicitor General who piloted the Bill through the Commons, "are elected because they are thoroughly qualified and add distinction to the society". He referred to the intention of the Bill "that women should now have the opportunity of becoming members of these learned societies". The Solicitor General's reasons for rejecting the amendment indicate that the statute itself did not require a society to admit a woman member: the effect of his statement was that if it turned out that the learned societies did not admit qualified

women, Parliament would take further action by another Bill to ensure that they did so.

It seems clear from all this that the United Kingdom Parliament did not, by enacting the 1919 statute, intend to enact anti-discrimination legislation with respect to private associations or societies.

C. Interpretation

(1) "Any incorporated society"

We now turn to the question whether Judicature Act section 40 requires any non-profit corporation in Alberta to admit members without discrimination on grounds of sex or marriage.

The United Kingdom legislative history which we have described strongly suggests that the section applies only to societies which have a specifically public aspect to them -- societies involved in the practice of professions and learned societies. While the intention of United Kingdom legislators in 1919 cannot automatically be attributed to Alberta legislators either in 1930 or 1987, it seems likely that the 1930 Alberta legislators who copied the United Kingdom legislation some 11 years after its enactment had some understanding of the political and legal background against which the 1919 statute was enacted, and had similar intentions. There is no reason to impute to them an unthinking desire to copy the United Kingdom legislation with no understanding of what that legislation meant and was intended to accomplish.

It will be seen that the other things mentioned in the Sex Disqualification (Removal) Act, 1930, and section 40 of the Judicature -- the exercise of office, appointment to a civil or judicial office or post, entry to civil professions and vocations -- all have specifically public aspects related to public law. It would be surprising to find that the Legislature had included in the same list a reference to one kind of private legal entity but not to other kinds nor to unincorporated entities. Further, if the term is not restricted to the kind of "incorporated society" which the United Kingdom Parliament had in mind, there could be considerable doubt about what "an incorporated society" would include. We do not think that section 40 of the Judicature Act applies to private societies incorporated under the Societies Act or to non-profit companies incorporated under the Companies Act, and we do not think that it would apply to associations incorporated under the proposed Incorporated Associations Act.

(2) Anti-discrimination

It seems significant that the Legislature enacted the Sex Disqualification (Removal) Act, 1930, only a few months after the Judicial Committee of the Privy Council had issued its decision in Edwards v. Attorney General [1930] A.C. 124 in which it held that women are "persons" who are qualified to be summoned by the Governor General to the Senate of Canada. It seems appropriate to infer that the Legislature, in enacting the Sex Disqualification (Removal) Act, was responding to a general feeling of the times. The long title of the Act ("An Act Respecting the Removal of Sex Disqualification") is at least consistent with the suggestion that it was intended to ensure

that the legal disqualifications and disabilities which the general law had long imposed upon women would have no further effect in Alberta.

In 1930, legal disqualifications and disabilities were an important issue and their removal was an important policy objective. However, the law had not then advanced to the point of prohibiting actual discrimination by individuals against individuals on grounds of sex, race, colour and creed. It is not apparent that there was any reason for the Alberta Legislature to single out incorporated societies -- whatever that term might be interpreted to include -- as objects of anti-discrimination legislation, particularly since the activities of many incorporated societies are of kinds which are not usually included in anti-discrimination legislation even today.

Section 40 of the Judicature Act does not contain any legislative command, that is to say, it does not command any person to do or not to do something. This may be contrasted with the structure of the anti-discrimination provisions of the Individual's Rights Protection Act, which gives specific directions to specific classes -- employers and landlords being the most important -- not to engage in certain kinds of conduct towards other persons by reason of race, religious beliefs, colour, sex, etc. We see no reason to interpret section 40 as giving a command which is not there. This is particularly so in view of the alternative and sensible interpretation which is available, namely, that the section means what it says and merely removes disqualifications or disabilities imposed by law.

(3) Subsequent practice

It has not, so far as we know, been suggested over the years that the Imperial Order, Daughters of the Empire, the Women's Institutes, the YMCA and the YWCA, men's and women's lodges, or men's and women's university fraternities have acted illegally in accepting members of only one sex. Suggestions that it is wrong for private clubs to exclude one sex are of comparatively recent origin and suggestions that it might be illegal are more recent still. Acquiescence in illegality does not usually render the illegality legal, but the acquiescence of society in so widespread and significant a practice for over half a century is certainly some evidence that the practice is not regarded as illegal and may even be some evidence that it is not illegal.

(4) Conclusions about section 40

It does not appear that section 40 of the Judicature Act applies to private societies incorporated under the Societies Act or similar bodies incorporated under other legislation. It does not appear that section 40 prohibits a private society or similar body from refusing to admit members on the grounds of sex or marital status.

3. Whether the proposed Incorporated Associations Act should include anti-discrimination provisions

It is not our function in this project to express any opinion upon the desirability or otherwise of anti-discrimination legislation. We doubt that Alberta society is ready to say that women or business women, male secretaries or nurses, or single people, cannot associate to discuss and act upon matters of

specific interest to them. We doubt that it is ready to require organizations such as the Imperial Order, Daughters of the Empire, Women's Institutes, the Boy Scouts and the Girl Guides, and fraternities, to admit members of the opposite sex and to admit both married and unmarried people. Bearing in mind that discrimination on grounds of race, religion and colour is now customarily dealt with along with discrimination on grounds of sex, we doubt that Alberta society is ready to say that ethnic groups must admit members of other ethnic groups or that church organizations must admit members of other churches.

But if Alberta society is ready for extended anti-discrimination legislation, either in general or in connection with the operation of facilities which are not open to the public, we think that the place for the extended anti-discrimination legislation is in the existing anti-discrimination statute, that is, in the Individual's Rights Protection Act. If that is done, anti-discrimination legislation can be kept as a coherent whole, and it can be made to apply to all organizations, whether incorporated under the proposed Incorporated Associations Act or some other statute, and, indeed, whether incorporated or not.

The proposed Incorporated Associations Act should so far as possible restrict itself to incorporation and its necessary consequences. We do not think that it is an appropriate vehicle for a broad and general social policy which has nothing to do with incorporation machinery and which should apply to an organization whatever the legal form of that organization.

## APPENDIX B

## COMMENTATORS

This Appendix lists those who commented and advised about this report and draft Act

Non-lawyers

Jean McNeely
Ron Moore, M.L.A.

Organizations

Communitas Inc. (Lynn Hannley)
Institute of Chartered Accountants
Social Planning Council (Peter T. Faid)

Registrars and Directors of Corporations

W.W. Proskiw (Alberta)
Frederick H. Sparling (Canada)
Charles McAllister (New Brunswick)
Henry Ozolins (Ontario)
Philip J. Flory (Saskatchewan)
C.B. Alcorn (Nova Scotia)

Lawyers who commented in writing

Maurice C. Anderson
Robert W. Anderson
Michael Clegg, Q.C.
David M. Goldenberg
Gary Hanson
Gary W. Harris
J. Martin Hattersley, Q.C.
Fern Kahanoff
Michael Klause
Leonard (Tony) Mandamin
R.L. McKinnon
Fred G. Mitchell
Robert Paston
Duane Russell
F.L. Scott
Audrey Wakeling

Lawyers in attendance at Calgary meeting - October 27, 1986

Maurice C. Anderson
E.M. Bredin, Q.C.
Margaret J. Copithorne-Ramsay
J. Allen Howard
Anne Jayne
Diane J. Pettie
John T. Ramsay
Evelyn Ross (Librarian)
Kathy Taylor
Paul Wiebe
L.W. Yuzda

Lawyers in attendance at Edmonton meeting - October 31, 1986.

Michael Ford
Lois Gander
Eugene Harasimiw
Martin Hattersley
Laird Hunter
Jeananne Kathol
Paul Le Chambre
Fred Mitchell
Joan Riddell
Duane Russell
R.A. Seidel